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of the Cornell Institute for Public Affairs

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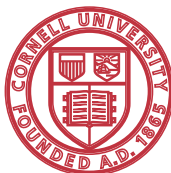
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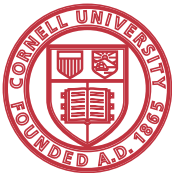


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Mission Statement

As the academic journal of the Cornell Institute for Public Affairs (CIPA), *The Current* provides a platform for public policy discourse through the work of CIPA fellows and their mentors, with contributions from the public affairs community.

Editor's Note

The staff of *The Current* is pleased to present the spring 2008 edition. This semester's edition features a diffuse set of themes, with articles that turn a critical eye to how and why countries interact through investment and troop deployment, propose strategies to mitigate criminal recidivism and the negative effects of the Nepalese sex trade, and tell an analytical narrative of how the complexity and misinterpretation of legislation can thwart emergency response strategies.

We are pleased also to bring you an interview with Dr. Gene W. Hickok, former U.S. Deputy Secretary of Education, who graciously accepted an invitation to sit down with journal's incoming Editor-in-Chief and Business Editor to discuss education policy and the No Child Left Behind Act.

This semester, the staff of *The Current* worked to provide more opportunities for the active exchange of ideas and information among CIPA fellows and the journal's readership. An online forum was created as a space for short editorial submissions, the first four of which can be viewed at http://www.cipa.cornell.edu/cip_thecurrentopeds.html. Also, for the first time, graduating fellows were invited to submit the title of their thesis or professional report to be listed in the journal. It is our hope that this will showcase the talents and diverse interests of CIPA fellows and give our readers the opportunity to seek out additional information regarding current research that may be of interest to them.

None of this would have been possible without the guidance of Faculty Advisor Dr. Jerome Ziegler, the constant support of the CIPA administrative staff, and the tireless enthusiasm and dedication of the journal's staff. It has been a privilege and a joy to work beside such remarkable and kind individuals.

Sincerely,
Amanda LaBelle

The Current reflects the diverse political, cultural, and personal experiences of CIPA fellows and faculty. The views presented are not necessarily the opinions of *The Current*, the Cornell Institute for Public Affairs or Cornell University.

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Motivations for Troop Deployment

The Significance of Economic and Domestic Contexts

Jenny Hwang

ABSTRACT:

There exists a great deal of research addressing economic, domestic, and political influences on military action taken by the United States. The perennial question in this debate includes political actors and the motivations that seem to drive their decision-making abilities. An area of interest is the role that political actors play in maintaining levels of military troop deployment. I hypothesize that there is a causal relationship between domestic issues and military action. In order to test this hypothesis, a two-tailed regression analysis was performed against 46 cases, years 1960 to 1995, with presidential approval ratings and U.S. unemployment rates as my primary independent variables, and levels of overseas troop deployment as my dependent variable. The results of this research affirm that economic concerns play a role in troop deployment levels. It also reveals that while public opinion polls do not significantly influence political actors' decision-making when determining levels of overseas troop deployment, unemployment rates do.

The United States' involvement in the second Iraq War increased public interest in military action. When troops failed to find weapons of mass destruction in Iraq, people began to question the motives behind the invasion. Some argued that oil was the actual impetus for war; others argued that it was for the sake of democracy. These debates touch upon fundamental questions over what influences politicians' decisions to engage in military action.

Troop deployment is the physical manifestation of the force used by the president for peacekeeping, humanitarian, or hostile military protection. This article considers factors that influence military action abroad by using overseas troop deployment to represent one type of American military intervention. Some environments are more conducive to military action than others. In question is the impact that economic concerns, the domestic climate, and the political structure of the American federal government have on determining the degree of action taken by political leaders. Specifically, I hypothesize that a variation in the domestic situation causes a variation in the levels of troop deployment because political actors are cognizant of what their constituents want.

In order to test this theory, I ran a multiple regression analysis, which compared varying levels of troop deployment with economic variables, measured in terms of U.S. balance of power, crude oil imports, and GDP, and domestic variables, measured in terms of the presidential approval rating and the U.S. unemployment rate. Also, a means test was performed to determine if certain political characteristics of the federal government facilitate greater variations of troop deployment than others.

Schools of Thought

There are currently three schools of thoughts considered when debating the influences of military action: economic, domestic, and political. Economics has consistently played an integral role in formulating U.S. foreign policy. The economic school of thought transcends its boundaries and manifests itself in the competing domestic and political schools. As David Clark, an Associate Professor of Political Science at Binghamton University says, “Foreign policy is found in the nexus of domestic, political and economic concerns and the pursuit of the national interest.”¹

Economic

The first school of thought focuses on the economic relationship between the U.S. and the rest of the world. Foreign investments and U.S. trade have become popular measurements for such interests. There is general consensus within the academic community that economic concerns play a significant role in an actor’s decision to use military force. This idea dates back to “classical Marxism, which identifies the needs for imports of raw materials, export markets, and foreign investment as the principal determinants behind the foreign policy behavior of major capitalist powers.”² For example, the United States uses direct military interventions to influence “dollar diplomacy.”³ Harvard University’s Jeffrey A. Frieden illustrates this point by using former U.S. policy attitudes toward Latin America. Frieden says,

[I]nvestors frequently appealed for American military intervention in the Caribbean. Sugar planters in Cuba and the Dominican Republic, banana companies in Central America, oilmen and farmers in Mexico, all called insistently for United States government intervention, up to and including military force, when local turmoil and/or political opposition endangered their investments.⁴

Along with foreign investments and U.S. trade, oil protection and procurement is thought to be another important aspect of U.S. foreign policy. According to historian Gabriel Kolko, the U.S. has consistently protected its access to oil-rich regions.⁵ For example, the U.S. is “physically and militarily present on territories that hold 40 percent of the world’s proven reserves and control 45 percent of the world’s net oil exports.”⁶ Oil is a valuable commodity. One wonders if it is valuable enough for the U.S. to take precautionary and protective measures to ensure access when the supply of oil is threatened.

Domestic

The second school of thought is domestic. This school represents the amount of influence constituents have over the behavior of political actors in making military decisions. For instance, political actors use diversionary tactics in order to distract the public from domestic uncertainties. These uncertainties include “scandal, economic distress or displacement, or sagging approval ratings.”⁷

Political actors want to keep their voters happy. Richard A. Easterlin, an Economics professor at the University of Southern California, adopts a theory on the economics of happiness. He writes, “Economics places particular stress on the importance of life circumstances to well-being, particularly one’s income and employment situation.”⁸

Michigan State University’s Charles W. Ostrom and the University of British Columbia’s Brian Job have done research to support the evidence that domestic political forces influence the likelihood that the U.S. will engage in conflict.⁹ However, this research is contested. James Meernik of the University of North Texas suggests that domestic conditions are secondary concerns, not primary incentives, to use military force.¹⁰ David Clark says, “Although their empirical designs do not expect or test substitution of one policy for another, both provide evidence that leaders employ domestic policies to create political environments in which they can pursue foreign policies that might otherwise be politically impossible.”¹¹ Clark does admit that at its core, diversionary tactics are difficult to measure because it is impossible to ascertain individuals’ motives.

A second component to the domestic school is the impact of public opinion on political actors. This component is highly controversial. University of Binghamton’s Benjamin O. Fordham says, “While some authors argue that very popular presidents are more likely to use force, others contend that presidents faced with declining popularity may use the international conflict to generate domestic support.”¹² Upon testing for a negative relationship between approval and military action,¹³ Dennis Foster and Glenn Palmer find that there is no diversionary relationship between a decline in approval and an increase in military activity.¹⁴ The debates suggest that there is either a positive relationship between public support and military action or no relationship at all.

Political

The third school of thought is political, which deals with the institutional structure of the U.S. government. Similar to the domestic school, the political school is plagued by scholarly debate. Political scientists have dedicated much discussion to unified versus divided governments, the roles that political parties play, and the effects of an election year and whether they affect how politicians govern. Political scientist David McKay says, "Within the political science profession and in the broader political community, it was broadly accepted that common party control of Congress and the presidency was the prerequisite of good government."¹⁵ However, many argue that no such prerequisite exists. For example, Stanford University's Keith Krehbiel espouses a theory called pivotal politics¹⁶ in which he shows that a divided versus unified government does not affect legislative productivity.¹⁷

Hypothesis and Equation

The economic, domestic, and political schools of thought are all interdependent. While debate exists over the degree to which each school affects the decision-making process, the economic school prominently stands out as having the most direct effect on U.S. military action. The domestic and political schools, on the other hand, face much controversy.

There is much disagreement within the domestic camp regarding the correlation between political actors' use of diversionary tactics and public opinion polls, and their willingness to use military action. In order to resolve the debate, I test the issues within the domestic school of thought to determine whether or not variations in the presidential approval ratings and unemployment rates cause variation in the levels of troop deployment. The hypothesis proposed in this article is that domestic diversionary tactics influence ways in which political leaders use military tactics, which affect levels of troops deployed to foreign countries. A separate analysis will also test ways in which political institutions affect levels of troop deployment. The simple equation for the model is:

$$\text{Troop Deployment} = \text{Economic} + \text{Domestic}$$

$$\text{Troop Deployment} = \text{U.S. Balance of payment (BOP)} + \text{U.S. Crude Oil Imports} + \text{U.S. GDP} + \text{Presidential approval rating} + \text{Unemployment Rate.}$$

Concurrently, a means test will be run in lieu of a regression analysis for the variables within the political school. These include election year, presidential party, party of Congress, and the party make-up between

the President and Congress. The means test is a better method to understanding the effects of the coded variables with respect to troop deployment. To run a regression analysis on the categorical variables would be to record inconsequential results because such an analysis of the variables would not explain the frequency with which such events occur.

Dependent Variable

Military action has been measured in various ways. Paul Diel, Jean Kingston,¹⁸ and Tom Riddell¹⁹ look at military buildup in terms of the change in the rate of military expenditure to determine the propensity to initiate conflict. Other researchers employ major uses of force in a given year to explain military action.²⁰ An element missing from the discourse is studying military action in terms of levels of troop deployment to foreign countries. Military capabilities include overseas presence, both permanent and temporary. From this I draw my dependent variable.

Competing Variable: Economic

There is general consensus that economic variables play a significant role in dictating United States' foreign policy and that they permeate into the other schools of thought, specifically the domestic school.²¹ In her study, Yoon finds little correlation between foreign investment and military intervention, which she measures as ordinal codification of the different degrees of military action. Continuing from her study, I test foreign investment, measured in terms of U.S. trade balance of payments (BOP), against troop deployment to determine whether variation in the balance of payment produces variation in troop deployment levels. Balance of payments is an accurate indicator of foreign investment because it "compares the dollar difference of the amount of exports and imports, including all financial exports and imports. A negative balance of payments means that more money is flowing out of the country than coming in."²² I also look at the economic health of the United States by using the Gross Domestic Product (GDP) levels as a competing variable to see how variation in the domestic economy causes variation in levels of troop deployment. GDP measures the output of goods and services produced by labor and property in the United States.²³

The U.S. dependence on world oil production is another economic aspect worth testing. Scholars suggest that the growing trend in the dependence on foreign oil affects ways in which foreign policy is mandated.²⁴ In order to test this relationship, I measure the United States' crude oil imports.

Independent Variable: Domestic

Fordham uses economic growth as one variable to test the attractiveness of an actor to use military force. He suggests that a strong domestic economy, such as high employment rates, provides greater public support for military action because it affords political leaders with greater latitude in pursuing policies that are otherwise difficult to implement, thus emboldening them to take action. In other words, a healthy domestic situation can assuage and distract the public. Therefore, I use the unemployment rate as a consensus variable to see how variations in the domestic economy cause variations in levels of troop deployment. The unemployment rate measures the percentage of those unemployed divided by the total workers participating in the labor market.²⁵

Fordham also suggests that the president's popularity can influence a decision to enter into military conflict.²⁶ Lian and Oneal draw upon the "rally around the flag effect," wherein presidents use military force to raise public approval ratings.²⁷ I use presidential approval ratings from the Gallup Organization to test this assertion. In order to minimize as much bias as possible, random approval ratings from different months have been selected for the 46 cases. This best neutralizes events that may have occurred in that given year.²⁸ I will see if there is a relationship between the approval rating and the level of troop deployment in that year.

Case Selection and Management

Troops serve in various capacities, from peacekeeping to military action. In order to see what relationship influences variation in the level of deployment, cases are measured in annual increments. Annual deployment numbers reflect the total number of military personnel abroad in the given year. I limit the time period from years 1960 to 2005 for a statistical study of 46 cases.

Measurements: Validity and Reliability

Figures for levels of troop deployment were taken from a historical database compiled by the Heritage Foundation.²⁹ Statistics on GDP and crude oil imports were derived from the Bureau of Economic Analysis and the Energy Information Administration, respectively. Lastly, U.S. trade statistics came from the U.S. Census Bureau's Foreign Trade Division,³⁰ and polling results of the president's approval rating were collected from the Gallup Poll.

Caveats

Levels of troop deployment depend on present time circumstances. Factors such as technological advances, global stability, and strength of world organizations like the United Nations are not considered because they are difficult to quantify. This does not minimize their importance; nor does it minimize the variables I tested. Still, arguments can be made that variables not tested in this article can more accurately measure the varying levels of troop deployment.

In order to gauge public sentiment, researchers rely on public opinion data polled by institutes such as the Gallup Organization, National Opinion Research Center, and Roper Center for Public Opinion Research.³¹ Kurt Taylor Gaubatz of Old Dominion University recognizes there are constraints when using public opinion polls. One constraint is the way in which questions are framed. Gaubatz, like Baum and others,³² agrees that the public as a whole generally lacks a firm understanding of foreign policy issues.

One caveat of troop deployment levels, which are recorded annually, is that this research does not take into account those soldiers serving on multiple tours. Each overseas service member is counted a single time. Also, in contrast to past studies that dichotomize interventions in terms of the degree of conflict, there is no distinction made between soldiers stationed for peacekeeping purposes and soldiers sent abroad for military action.

Analysis and Results

In order to demonstrate the impact that unemployment rates and presidential approval ratings have on the levels of troop deployment, I run a multiple regression analysis to determine the significance³³ of the independent variables within the economic and domestic schools in predicting the levels of troop deployment. Furthermore, I run a means test of the political variables, as they relate to the levels of troop deployment, in order to test the hypotheses within the political school of thought.

Initial Analysis

Figure 1 below is a statistical summary for each variable I will analyze. It is important to note that four of my independent variables are categorical.

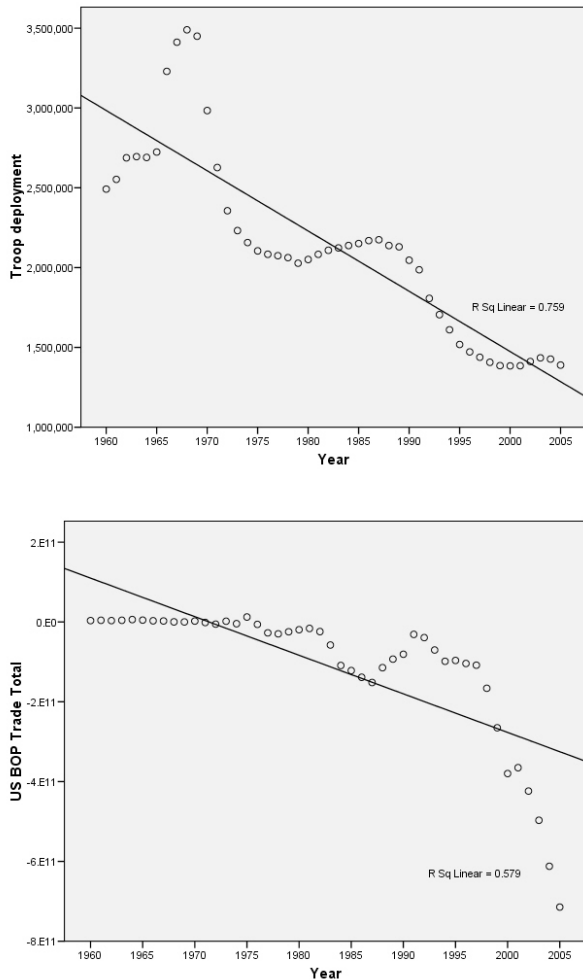
Figure 1: Descriptive Statistics

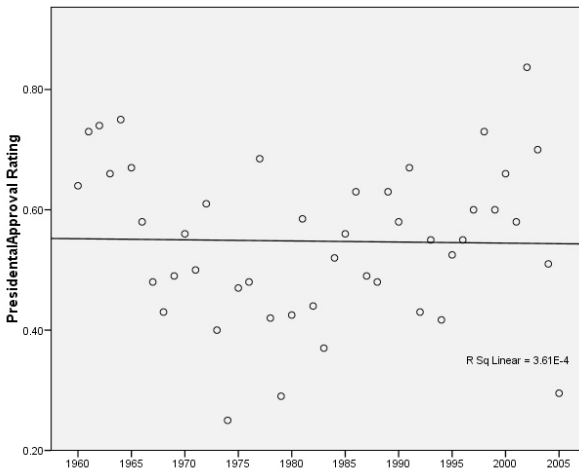
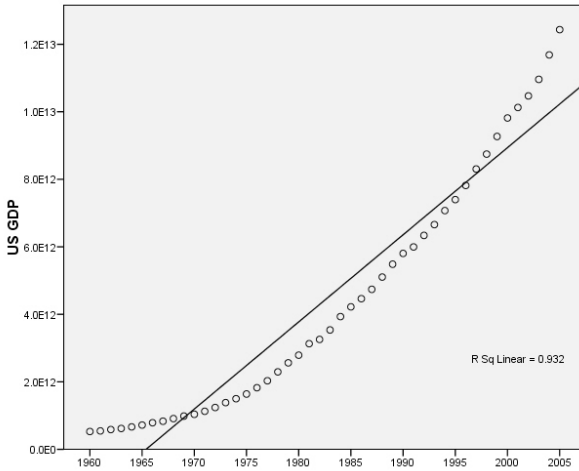
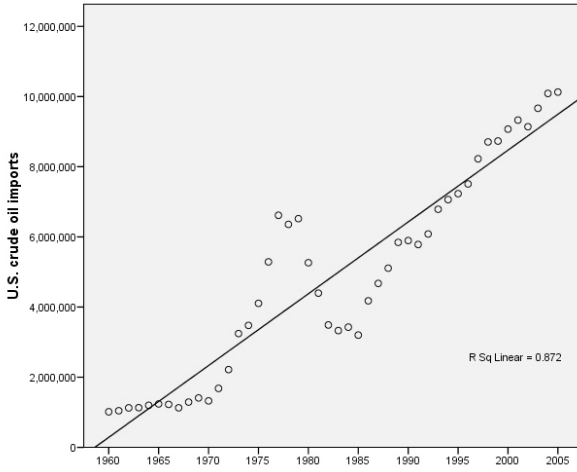
	N	Minimum	Maximum	Mean	Std. Deviation
Troop Deployment	46	1,384,338	3,489,588	2,134,900	581,530.842
U.S. BOP Trade Total (in billions)	46	-714.371	12.404	-107.580	170.489
U.S. Crude Oil Imports	46	1,015,000	10,126,000	4,890,478	2,940,983
U.S. GDP (in billions)	46	526.400	12,433.900	4,420.883	3,590.147
Presidential Approval Rating	46	.25	.84	.5478	.12935
Unemployment Rate	46	3.5	9.7	5.896	1.4305
Election year	46	0	1	.26	.444
Presidential Party	46	0	1	.54	.504
Congress	46	0	2	1.17	.608
Pres/Cong	46	0	4	1.80	1.327
Valid N (listwise)	46				

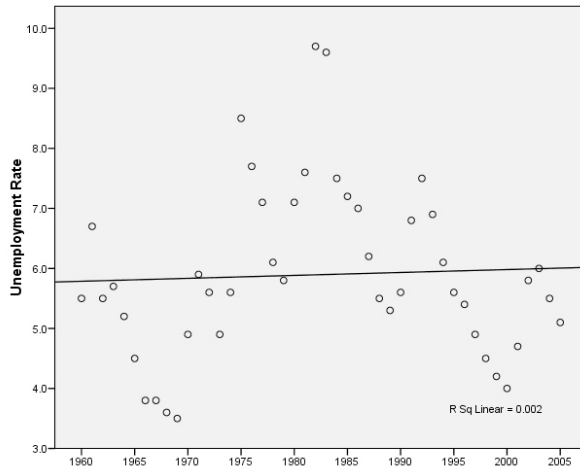
Scatterplots³⁴ are used to visually depict the relationship between the dependent variable and each independent variable. The graphs suggest a correlation between troop deployment and U.S. BOP, U.S. crude net oil, and U.S. GDP, while a correlation with Presidential Approval Rating and Unemployment Rate are ambiguous. The scatterplots also imply a positive relationship with U.S. BOP and a negative relationship with U.S. crude net oil and U.S. GDP. For coded variables, scatterplots help visualize the number of instances the independent variables occur at the level corresponding to the dependent variable. For example, the scatterplot for Congress reveals there were more occurrences of a unified, Democratic-led Congress than a split or Republican-led Congress between 1960 and 1995. The scatterplot for the party relationship between the President and Congress (Pres/Cong) shows that there have been more instances of a split in leadership, with a Republican president and a Democratic majority Congress, and a split in leadership among the president, the Senate, and the House. In addition, the graph for President shows that more Republican presidents have held office during the time period, and that there were more non-election years than there were election years.

Bubble plots (see Figure 2 below) depict trends in variables over time. For example, troop deployment has been steadily decreasing. This trend is not surprising. One explanation is the advancement of military technology because such developments require less manpower on the ground during military conflicts. U.S. BOP has also decreased between 1960 and 2005. Conversely, U.S. crude oil imports and U.S. GDP have increased in the past 46 years. Once again, this is to be expected, as the American economy has grown steadily since 1960, and dependence on energy sources has increased in tandem. I found no relationship between time and presidential approval rating or between time and unemployment rate.

Figure 2: Bubble plots³⁵







I use the correlation matrix to see the relationship each independent variable has with the other. The correlation matrix is the first alert for multicollinearity issues.³⁶ The matrix reveals three potential multicollinear relationships.³⁷ U.S. BOP and U.S. crude oil imports are negatively correlated at -0.756. This result is significant at $p < 0.001$. U.S. BOP also runs into problems with U.S. GDP, with a correlation of -0.864. This correlation value means that there is an 86percent chance that both variables are negatively correlated. This result is significant of $p < 0.001$, which means that the results can be accepted. Also, U.S. crude net oil imports and U.S. GDP are highly correlated at 0.921, with a p-value of $p < 0.001$. The multiple regression analysis will resolve the multicollinearity issues.

Simple Regression

A simple regression of the dependent variable is run against each independent variable individually. It shows the one-to-one relationship between the variables. The simple regression equation for this model is $\text{troop deployment} = x_t * m_t + \beta + \epsilon_t$, where x_t represents the independent variable, m_t represents the slope of the line, β represents the constant coefficient, and ϵ represents the error term.

Figure 3: Simple Regression Results³⁸

Variable	β	R ²	Significance
U.S. crude oil imports	-0.179	0.819	p<0.001
U.S. GDP	-1.367E-007	0.712	p<0.001
U.S. BOP	2.161E-006	0.401	p<0.001
Unemployment Rate	-93169.194	0.053	p=0.126
Presidential Approval Rating	-154287.243	0.622	p=0.821
U.S. crude oil imports	-0.179	0.819	p<0.001

Economic

The analysis for the U.S. BOP indicator confirms that for every point increase in U.S. BOP, there is a 0.00000216 increase in troop deployment. The result is significant at p<0.001. Troop deployment and U.S. BOP are positively correlated. This is consistent with the trend seen in both the scatterplot and bubble plot in that the United States balance of trade increases as troop deployment levels increase. The relationship between troop deployment and U.S. crude oil reveals that for every point increase in U.S. crude oil, troop deployment decreases by 0.179. This result is significant at p<0.001. The simple regression of troop deployment on U.S. GDP reveals that for every point increase in GDP, troop deployment decreases by 0.000000137. The result is significant at p<0.001. The simple regression analysis of the three economic variables affirms scholars who argue that economic factors influence military action.

Domestic

Upon running simple regressions on the two domestic factors, Presidential Approval Rating and Unemployment Rate, I find that the two factors do not explain levels of troop deployment. The simple regression of troop deployment on Presidential Approval Rating shows that for every point increase in Presidential Approval Rating, there is a 154,287.243 point decrease in troop deployment. However, this result is not significant at p=0.821. Lastly, the simple regression on the Unemployment Rate shows that for every point increase in the Unemployment Rate, there is a 93,169.19 decrease in troop deployment. Similar to the results of Presidential Approval Rating, the result is not significant at p=0.126.

Multiple Regression

A multiple regression analysis builds upon the results of the simple regression models by showing the relationship and statistical significance

of the dependent variable, troop deployment, against the independent variables in aggregate. The initial multiple regression equation is:

$$\text{Troop deployment} = \text{BOP} * m_1 + \text{U.S. crude oil imports} * m_2 + \text{U.S. GDP} * m_3 + \text{Approval Rating} * m_4 + \text{Unemployment Rate} * m_5 + \beta_t + \epsilon_t$$

Figure 4: Initial Multiple Regression Model

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.945(a)	.893	.879	202184.165

(a) Predictors: (Constant), Unemployment Rate, U.S. crude oil imports, Presidential Approval Rating, U.S. BOP Trade Total, U.S. GDP

Coefficients (a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta	B	Std. Error
1	(Constant)	3,765,178	208,442		18.063	.000
	U.S. BOP Trade Total	-5.9E-007	.000	-.173	-1.614	.114
	U.S. crude oil imports	-.141	.028	-.713	-5.049	.000
	U.S. GDP	-5.7E-008	.000	-.353	-1.940	.059
	Presidential Approval Rating	-283,943	244,530	-.063	-1.161	.252
	Unemployment Rate	-101,090	22,013	-.249	-4.592	.000

(a) Dependent Variable: Troop deployment

In contrast with the results from the simple regressions on page 15, only U.S. crude oil is still significant. Presidential Approval Rating remains insignificant at $p=0.252$. However, there are three deviations from the simple regression analysis. First, U.S. BOP, which was initially significant at $p<0.001$, is now insignificant at $p=0.114$ through multiple regression analysis. Second, U.S. GDP, which was significant at $p<0.001$, is now slightly insignificant at $p=0.059$. Third is the unemployment rate. While the simple regression for Unemployment Rate shows that the result is insignificant at $p=0.126$, the multiple regression analysis shows that Unemployment Rate is now significant at $p<0.001$. I test to see if any of these results are affected by multicollinearity.

As discussed in the initial analysis of the correlation matrix, U.S. BOP and U.S. crude oil are negatively correlated at -0.756. Also, U.S. BOP and U.S. GDP are negatively correlated at -0.864. Lastly, U.S. crude oil imports and U.S. GDP are strongly correlated at 0.921. Additionally, the multiple regression reveals that U.S. BOP is insignificant at $p=0.114$, even though it is found significant through a simple regression at $p<0.001$. To determine whether or not the significance of U.S. BOP is affected by another variable, I compare it with U.S. GDP, the variable with which U.S. BOP shares the highest negative correlation.

Upon excluding U.S. BOP from the model, U.S. crude oil imports and Unemployment Rate remain significant, leaving U.S. GDP and Presidential Approval Rating as the two insignificant variables. The model has an overall R-square value of 0.886. When U.S. GDP is excluded, U.S. BOP remains insignificant at $p=0.645$. The overall model is $R^2=0.882$. This shows that while U.S. BOP and U.S. GDP are multicollinear, one variable does not affect the other in the model. However, when U.S. crude oil is excluded from the analysis, both U.S. BOP and U.S. GDP become statistically significant, with p-values of 0.040 and $p<0.001$, respectively. The overall model is $R^2=0.824$. Thus, U.S. crude oil will be represented by U.S. GDP because they are highly correlated at 92.1percent.

Figure 5: Final Multiple Regression Model

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.908(a)	.824	.812	252468.473

(a) Predictors: (Constant), Unemployment Rate, U.S. GDP, U.S. BOP Trade Total

Coefficients (a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta	B	Std. Error
1	(Constant)	3,502,681	170,637		20.5	.000
	U.S. BOP Trade Total	-9.4E-007	.000	-.276	-2.1	.040
	U.S. GDP	-1.8E-007	.000	-1.108	-8.6	.000
	Unemployment Rate	-114,650	26,855	-.282	-4.3	.000

(a) Dependent Variable: Troop deployment

After resolving the multicollinearity issues and dropping the insignificant variables (U.S. crude oil imports and presidential approval rating), the final multiple regression model shows that three variables are significant (see Figure 5 above). The R-square for the entire model is 0.824, meaning that U.S. BOP, U.S. GDP, which also represents U.S. Crude Oil, and Unemployment Rate account for 82.4percent of the changes in troop deployment. This confirms the relationship between the economic variables and troop deployment. It also shows that a variation in unemployment rates cause a variation in troop deployment. My original hypothesis is proven partly correct. While presidential approval ratings do not affect levels of troop deployment, unemployment rate has a slight effect.

Impact Analysis

An impact analysis estimates the maximum impact a change in an independent variable can have on the dependent variable.³⁹ Figure 6 below lists the impact that each significant variable has on troop deployment. The chart shows that the maximum impact U.S. BOP can have is -0.3245 or -32.45percent. The maximum impact that U.S. GDP, and U.S. crude oil, can have on troop deployment is -1.01244. This means that U.S. GDP can change troop deployment by -101percent. Thus, U.S. GDP has a deceptively high impact on troop deployment. One explanation is that U.S. GDP trades in the trillions in comparison to troop deployment levels, which hover in the low millions.

Figure 6: Impact Analysis

Variable	Maximum Impact
U.S. BOP	-32.45percent
U.S. GDP	-101percent
Unemployment Rate	-33.77percent

Predictor Model

The predictor equation predicts how troop deployment will vary given the changes in U.S. BOP, Unemployment Rate, and U.S. GDP, which also represents U.S. crude oil imports. The R-value of 0.824 indicates that 82.4percent of the spread of troop deployment can be explained by the combination of the four independent variables. The other 17.6percent is attributable to other random factors (residuals).

The predictor equation for the economic and domestic variables is:

$$Y = 3502681 - 9.4E-007X_1 - 1.8E-007X_2 - 114650X_3$$

where:

Y = troop deployment

X_1 = U.S. BOP

X_2 = U.S. GDP (and U.S. crude oil imports)

X_3 = Unemployment Rate

Political⁴⁰

In the period between 1960 and 2005, there were more Republican presidents than there were Democratic presidents. However, the mean level of troop deployment during the aggregate Republican presidencies was 2,045,561.72, which is 195,692.47 less than the level of troops during the aggregate Democratic presidencies. The Democratic Party also enjoyed majority status in Congress 61percent of the time between 1960 and 2005. It also deployed the highest average level of troops, with 2,360,559.04. In contrast, the Republican Party held majority status 28percent of the time, and in those instances, an average of 1,707,958.62 troops was deployed. This result is consistent with the conclusion in the paragraph above.

There are eight possible political party combinations among the President, the Senate, and the House of Representatives. For example, the same party can hold power in all three positions. In this research, I test five combinations, grouping together those instances when leadership is split in Congress (e.g. a Republican president, a Republican Senate, and a Democratic House). The means test reveals that there were more occurrences of a Republican president and Democrat-led Congress (16). The mean level of troops deployed was 2,223,158.50. However, this is not the highest average. As mentioned, more troops were deployed during a Democratic presidency and a Democratic Congress. In the 12 instances that the Democratic Party had control of both the presidency and Congress, a mean of 2,543,759.75 troops were deployed each time. Interestingly, in the four instances that the Republican Party held power in both the presidency and Congress, the mean level of troop deployment was the lowest, 1,415,560.25.

From 1960 to 2005, there were 34 non-election years with an average troop deployment level of 2,137,543.06. In the 12 election years, the mean level was 2,127,409.75. This is a difference of 10,133.31, with more troops deployed on average during non-election years. The result shows that a political leader does not necessarily deploy more troops during election years.

Implications

These findings confirm studies that claim a strong relationship exists between military action, which I measure in terms of troop deployment, and economic concerns. A promising aspect is the proven relationship between troop deployment and one of the domestic factors, unemployment rate. As the United States continues to engage in military interventions, talk of troop deployment will persist. Is it possible to determine a course of military action based on economic, domestic, and political influences? This article reveals that there are many factors to consider.

Discussions of military action are dominated by instances of conflict and the economic factors that contribute to the use of force. This article attempts to broaden the discussion by defining military action differently. Using levels of troop deployment as my dependent variable, results from the analysis suggest that many factors, including economic ones, contribute to variance in troop deployment levels from year to year. These results affirm part of my hypothesis that variations in the domestic school of thought, measured by unemployment rate, cause variations in levels of troop deployment.

Trends show that there is a negative relationship between troop deployment and the following: U.S. GDP, U.S. crude oil imports, and unemployment rate. U.S. BOP and troop deployment enjoy a positive relationship. The analysis also reveals a strong significance in these variables. The findings suggest that when the health of the domestic economy is strong, political leaders are less inclined to send more troops abroad. This contrasts with scholars who believe that there is a positive relationship between diversionary tactics and troop deployment.

In addition, the negative relationship between troop deployment and crude oil imports shows that variations in the oil import measurements cause changes in the levels of troop deployment. The correlation is revealing because it is not the direction one might expect. It contradicts both David A. Deese's claim that when energy security is threatened there is increased military action,⁴¹ and the general sentiment that the U.S. has greater incentive to intervene in oil-rich regions. One can argue that military strategies are constantly changing; that is, troop deployment is not necessary to protect the United States' oil interests because of the rapid advancement of military technology.

According to the regression analysis, there is no correlation between a variation in presidential approval rating and a variation in the levels of troop deployment. This falsifies part of the original hypothesis. The statistical insignificance of presidential approval ratings provides some clarity on the ways political actors act. It rejects Foster and Palmer's study, which asserts that there is a relationship between approval ratings and military activity. The result shows that there is

no relationship between a president's approval rating and the levels of troop deployment.

The means test adds a twist to a popular political stereotype that Republicans tend to deploy more troops than their Democratic counterparts. In terms of troop deployment, more troops, on average, were sent overseas when the Democratic Party was in power during the period of 1960 and 2005. Unfortunately, I have not been able to obtain troop deployment levels for recent years. It will be interesting to track the trend in light of the second Iraq War.

Conclusion

The implications of this research are clear. Economic, domestic, and political variables contribute to variations in troop deployment levels. The analysis confirms that economic factors are the most significant in terms of troop deployment decisions; however, certain domestic variables should not be overlooked. These findings have both predictive and descriptive value in making policy recommendations. One can create a checklist of the significant factors and predict what environment is most conducive to military action. On the other hand, the checklist could also be used as a measure to understand why the U.S. entered into war. For example, the 2003 statistical values for the four indicators are consistent with President George W. Bush's decision to invade Iraq. In 2003, the U.S. balance of payment was -\$496,915,000,000, which means there was more money leaving the U.S. than there was coming in. U.S. crude oil imports were 9,665,000 barrels and the GDP was roughly \$11 trillion. Upon comparing the statistics from 2002⁴² to 2003, the results show that in 2003, there was an increase in trade deficits, more crude oil imports, and a slightly higher GDP. The unemployment rate also increased to 6 percent. After a consistent decrease in levels of troop deployment prior to 2001, there was an increase from 2001 to 2003. Levels started to decrease slightly in 2004.

It has been five years since the beginning of Operation Iraqi Freedom, and people have argued about the level of troops in Iraq. Political leaders have suggested different strategies and military tactics for troop deployment along a continuum from complete withdrawal to an increased surge. The three remaining Democratic and Republican candidates in Election 2008 have addressed this issue. Both Democratic candidates have unequivocally promised to withdraw troops from Iraq if elected President. For example, in a Meet the Press interview with Tim Russert, Senator Barack Obama said that if he were president, he would withdraw all combat troops in 16 months: "We can get one to two brigades out per month safely. At that pace, we would have all our combat troops out in about 16 months from the time we initiate it. I

would like to see it start now. It is not clear that that's possible, given George Bush's posture. But 16 months from the time we initiate it, we could have our combat troops out."⁴³ During the Democratic debate in Los Angeles, moderator Doyle McManus asked Senator Hillary Clinton her plan for troop withdrawal in Iraq. Clinton answered, "Well, because, Doyle, I have been very clear in saying that I will begin to withdraw troops in 60 days. I believe that it will take me one to two brigades a month, depending upon how many troops we have there, and that nearly all of them should be out within a year."⁴⁴ In contrast, Republican candidate John McCain supported the Bush surge in 2007. In a speech to the American Enterprise Institute in January of 2005, McCain said, "There are two keys to any surge of U.S. troops: to be of value, it must be substantial and it must be sustained."⁴⁵ The results of this study are valuable in light of the current discussions on troop levels in Iraq by providing ways to measure situational effects in terms of troop deployment. The predictor model and impact analysis allow political leaders to assess the circumstances that may facilitate or complicate setting the levels of troop deployment.

Policymakers must weigh different variables when they determine levels of troop deployment. This article supports the idea of sustaining a strong domestic economy in order to raise public support for strategic military decisions. Former Secretary of State James L. Baker affirms the need for public support. In a lecture sponsored by the Library of Congress, Secretary of State Baker said, "Domestic support is vital to any successful foreign policy." Baker's assertion aligns with the findings of this study.

Just as firms maximize profit and individuals maximize utility, political leaders maximize power. For political leaders, power is manifested in maintaining their place in office. When the nation's economic stability is threatened, leaders will use protectionist measures to minimize the enormity of the hit because constituents will express displeasure, which leaders see as a threat to their position in office. A president loses credibility in both the domestic and international arena if he does not have the support of his citizens. A strong economy is a critical aspect of public support. It is also important that there are job opportunities for those who are seeking work.

Thus, with an overall R-square model of 82.4percent, my hypothesis has been partially supported. A variation in the domestic school, with U.S. unemployment rate representing a reason why political actors engage in diversionary tactics, causes variations in levels of troop deployment because domestic conditions create leeway for political actors to use force.

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31 There are more institutes dedicated to this endeavor. An extensive list can be found at: <http://www.ciser.cornell.edu/info/polls.shtml>.

32 Others include Foster and Palmer (2006).

33 "Significance" or "significant" is a statistical term to express certainty of a relationship between the independent and dependent variables. The significance of a result is referred to as the p-value. Popular levels of significance are 0.01, 0.05, and 0.10. For this analysis, "significant" expresses a relationship where $p < 0.05$.

34 The first step in regression analysis is to determine if the data set contains any outlying cases. A histogram examination and scatterplot analysis for each variable reveal that there are no outliers affecting the regression line. Therefore no data has been excluded.

35 The x-axis is the range of values of the respective variables and the y-axis is number of years.

36 A general rule of thumb is that the independent variables should have a correlation ≤ 0.5 and a correlation ≥ -0.5 .

37 In a multiple regression model, multicollinearity occurs when there is a high level of linear correlation among two or more independent variables. This can understate or overstate the effect the independent variables have on the dependent variable.

38 In descending order of the R-square value. The R-square explains the proportion of variation in troop deployment explained by the regression model of the various independent variables.

39 The impact analysis equation is $\beta(\text{Max}_{iv} - \text{Min}_{iv}) / (\text{Max}_{dv} - \text{Min}_{dv})$.

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42 In 2002, the U.S. BOP level was -4.23 million, its crude oil level was 9.1 million, GDP was \$10.5 million, President's approval rating was 83.7percent, the unemployment rate was 5.8, and Congress enjoyed a unified government.

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Education Behind Bars: *Lowering Recidivism through Post-Secondary Education in Correctional Facilities*

Sarah L. Schirmer

ABSTRACT

Studies show that prisoners who participate in post-secondary degree programs while incarcerated recidivate at a rate lower than those who do not participate, yet in the mid-1990s, state governments removed public funding for such programs. This paper looks at the issues surrounding publicly funded post-secondary education programs in correctional facilities, and focuses on New York in particular. State legislators should reinstate public funding for post-secondary degree programs, and support research of the link between post-secondary programs and recidivism in order to encourage reinstatement of public funding nationwide. This paper ultimately calls for lawmakers and society to put prisoner issues at the forefront of political discussion in order to bring attention to the issues and create stimulus for change.

Every year 700,000 state and federal prisoners exit the correctional system,¹ and most prisoners do not have the means to create a stable life. These prisoners often have traits in common that make reentry exceedingly difficult: low education attainment, lack of a stable life, drug addiction, and mental health problems. A post-secondary degree has become increasingly valuable in society, particularly in obtaining well-paid employment; yet only eleven percent of incarcerated state prison inmates have a post-secondary degree, compared to 48 percent of the general population.² There are four key ways to increase reentry success and decrease the chance of recidivism: discharge planning, drug and mental health counseling, vocational and General Education Development (GED) training, and post-secondary degrees. All states operate publicly funded GED and vocational training programs, and some offer college coursework, but there are zero publicly funded post-secondary degree programs in correctional facilities in the country.

This paper focuses on post-secondary degree programs in New York state prisons, and explores the link between post-secondary degrees and rates of re-incarceration. The focus will be on post-secondary degrees rather than GEDs because studies have shown that a degree has more value upon reentry and decreases re-incarceration rates more than a GED.³ More than 50 percent of state prisons offer vocational training and approximately 80 percent of state prisons offer GED programs, but as of 2005, only twelve prisons offered post-secondary

degree programs (this number has since decreased to an undetermined number).⁴ New York has four prisons that operate privately funded post-secondary programs,⁵ and therefore offers the best opportunity for analysis. This paper will recommend that in order to persuasively argue for the introduction of publicly funded post-secondary education programs in state correctional facilities (hereafter termed “post-secondary programs” or “post-secondary education”) advocates should complete a comprehensive study of the link between post-secondary degree completion and recidivism rates. In addition, there should be a call for action among policymakers and the public to discuss issues facing inmates in order to bring prisoner issues to the forefront of the political agenda in New York.

Self-Perpetuation of the Prison Population

While crime rates have fallen across the country since the 1990s, the number of prisons, prison population, and corrections expenditures has continued to rise. In 2007, New York State alone allocated \$2.4 billion for corrections.⁶ To put that number in perspective, for every dollar New York spent on education, it spent 73 cents on corrections.⁷ In 2006, New York state facilities housed 63,315 inmates; about four-and-a-half percent of the total US prison population.⁸ A 2008 Pew Center on the States report found that one percent of adults nationwide are behind bars, and one in nine black men ages 20 to 34 nationwide are in jail or prison (federal, state, and local facilities).⁹ The prison population is a positive causal loop: a person who has been incarcerated once has a 66 percent chance of re-arrest and a 37.8 percent chance of re-incarceration.¹⁰ Taken together, these statistics suggest that while New York and other states are pouring billions of public dollars into corrections, not enough money or attention is going into creating a long-term solution to reduce the prison population.

The 2007 Federal Second Chance Act, aimed at increasing GED and vocational training in correctional facilities nationwide, states that “less than 32 percent of state prison inmates have a high school diploma or higher level of education, compared to 82 percent of the general population.”¹¹ This suggests that people with lower education attainment levels are more likely to be incarcerated. To further demonstrate the link between a lack of education and incarceration, a 2003 National Assessment of Adult Literacy study found “among prison inmates, two to three percent had proficient prose, document, and quantitative literacy compared with thirteen to fourteen percent of adults living in households.”¹² Proficiency, as defined by this study, “indicates that an adult has the skills necessary to perform more complex and challenging literacy activities.”¹³ What is striking about the NAAL study

is not just the low level of proficiency among prisoners, but that, when compared to the general population, prisoners' proficiency level is 79 to 85 percent lower. The difference in proficiency levels demonstrates that educational attainment plays an important role in determining individuals' outcomes in life. One can conclude from these studies that high levels of education strongly reduce the chance of incarceration. This conclusion is furthered by a study by Haney et al., which found that

If we discount high school equivalency degree recipients and consider only those who actually graduate from high school, 68 percent of state prison inmates did not graduate from high school. This suggests that failure to graduate from high school is associated with a tripling of likelihood of being imprisoned.¹⁴

The link between lack of educational achievement and incarceration rates demonstrates the importance of education in reducing the prison population.

The Context of Recidivism in the United States

Recidivism is a very important term in the debate surrounding correctional education because the prison population is self-perpetuated by a high rate of re-incarceration. One definition of recidivism is "the reversion of an individual to criminal behavior after he or she has been convicted of a prior offense, sentenced, and (presumably) corrected."¹⁵ Correctional education advocates use recidivism rates to measure programmatic success, but the use of the term varies because its definition is fluid. There is little agreement among prison academics as to what constitutes recidivism as the term can refer to re-arrest, reconviction, re-incarceration, or even a criminal act in which the ex-offender is not caught. This paper joins most researchers in defining recidivism as re-incarceration within three years of release. Unless otherwise indicated, referenced studies define recidivism in the same manner.

When a prisoner is released, the factors that contributed to the initial criminal activity are still prevalent and are exacerbated by the stigma of a prison stay. Upon release, many prisoners face unemployment, homelessness, and little support for dealing with addictions, gang membership, mental health problems, and unhealthy relationships.¹⁶ Coley and Barton describe the barriers to employment as a three strike rule: a criminal record makes it difficult to find employment, particularly well-paying employment; time spent incarcerated reduces work experience; and employers have an aversion to hiring ex-offenders,

as some jobs are closed to felons completely.¹⁷ Ex-offenders who are unable to obtain employment tend to also have difficulty maintaining housing, and the combination of unemployment and homelessness is a strong incentive to commit crime upon release. Having a higher level of education makes finding employment easier, which lowers the incentive to commit crime, and therefore lowers recidivism rates.

When discharge planning is combined with increased educational attainment and other support programs ex-offenders will be able to utilize their degree to obtain well-paid employment, which may allow them to move into better neighborhoods and refrain from illegal activities. Nonprofit organizations, such as the Center for Employment Opportunity in New York City, work with ex-offenders to pair them with employers who are willing to hire qualified individuals with a criminal record. An increased level of education allows an ex-offender to request a higher paying position within a company, because salary is typically commensurate with experience. There are other benefits of post-secondary education, as will be described below, that help ex-offenders stay at one job long enough to merit benefits and a raise - incentive for ex-offenders to remain employed at the same job. In this way, post-secondary degrees, in conjunction with discharge planning, can counteract Coley and Barton's three strikes rule, create employment stability, and decrease recidivism.

Past Funding of Correctional Education

In 1972, the federal government created the Pell Grant program to assist low-income students in gaining access to post-secondary education. Prisoners who were not sentenced to death or life without the possibility of parole could apply as low-income students for Pell Grants to cover tuition, fees, books, and supplies.¹⁸ States also granted similar funds for prisoners who participated in post-secondary programs, such as the New York Tuition Assistance Program (TAP), which assists low-income students in paying for college. The 1995 Federal Crime Bill contained a provision entitled Violent Crime Control and Law Enforcement Act, which eliminated prisoner access to Pell Grants.¹⁹

The number of states offering post-secondary programs dropped from 37 to 26 in one year after the passage of the Crime Bill.²⁰ In 1995, 350 prisons offered such programs, and by 2005 only twelve continued to do so, including the four in New York, all privately funded.²¹ Since Pell and TAP grants were cut in the mid-90s, funding for correctional education programs relies on nonprofit organizations and private donors who see the value in such programs. These organizations use private donations and fundraising to provide education programs to inmates, at an average cost of \$2,500 per inmate.

Views That Shape the Debate

The issue of whether to provide post-secondary degrees is framed by the competing definitions of correctional facilities and prisons. Webster defines correction as “the treatment and rehabilitation of offenders through a program involving penal custody, parole, and probation” and defines prison as “a state of confinement or captivity.”²² These terms have two different connotations, yet policymakers and academics use the words interchangeably. Before the 1970s, Americans viewed prisons as places that would facilitate productive reentry into civil society upon completion of a sentence. Then, by the mid-70s, citizens started to view prisons as places of containment and “prison punishment soon came to be thought of as its own reward, serving only the goal of inflicting pain.”²³ These concepts shape the debate around correctional facilities and the rehabilitation programs they offer.

Today both views exist; proponents of post-secondary degrees view the programs as a means to rehabilitate offenders and decrease reincarceration rates. Opponents of such programs view prisons as places for containment and punishment, and as a means of protecting society from criminals. Proponents view prisoners as members of society who can benefit from rehabilitation, whereas opponents do not believe in using public dollars to fund social programs for prisoners because prisoners have committed an illegal act. Many Americans tend to cast off those behind bars, believing that prisoners lose their rights upon incarceration. The debate over correctional education is part of a much larger discussion on prisoners’ rights and their status in society.

Policymakers who voted for the 1995 Federal Crime Bill objected to appropriating public funds for post-secondary education programs for criminals while simultaneously cutting funds to social programs for law-abiding citizens. Policymakers argued “awarding grants to prisoners was unacceptable in an era of budget cuts for social programs, and such grants took money that could have been better used to assist law-abiding college students in paying for school.”²⁴ Raymond L. Jones, a defender of prisoner education rights, stated in 1991, “Those who oppose prison higher education suggest that prisoners are receiving a privilege that they do not deserve and argue that the inclusion of prisoners in higher education has the potential to undermine the moral legitimacy and the social meaning of punitive confinement.”²⁵ The lack of public support and awareness has made it difficult for supportive policymakers to garner constituent and legislative support for using public funds for post-secondary programs.

The simplest way to gauge changes in public opinion over time is through national polling data that measures public opinion toward crime and perpetrators of crime in order to evaluate how the public may feel about funding correctional education programs today. Public

opinion in regards to crime seems to shift with crime trends throughout the decades. In comparing the results from a Gallup poll asking adults whether they thought the criminal justice system was tough enough in handling crime, one finds that the public has become more approving of the criminal justice system as the crime rate has decreased. In 1992, when crime rates were high, 83 percent of respondents thought the criminal justice system was not tough enough, whereas in 2003, only 65 percent of American adults thought the same.²⁶ Conversely, the percentage of American adults who think the criminal justice system is too tough has increased from 2 percent 1992 to 6 percent in 2003. These results suggest that since public opinion has become more accepting of the criminal justice system, the public may support actions it takes to reduce crime further, such as rehabilitation and education programs.

In 1994 and 2003, Gallup Polls asked American adults which approach to lowering the crime rate should receive more money and effort: attacking social and economic problems that lead to crime through education and job training or improving law enforcement with more prisons, police, and judges. Respondents in 1994 were split almost evenly between the two options, but in 2003, 69 percent of respondents said more money and effort should go into attacking social and economic problems. In 2000, Pew Research Center asked American adults which method would best reduce violent crime, and 63 percent responded that jobs and community programs for youth would “reduce violent crime a lot.”²⁷

While it is difficult to find polls representing Americans’ feelings towards corrections and towards prisoners, the results of the polls above are encouraging. If Americans are increasingly supportive of appropriations and policies to address social and economic problems, specifically through education and job training, then it is possible that Americans are also willing to publicly fund correctional education programs.

Institutional and Political Barriers to Correctional Education

There are two major external barriers to implementing correctional education on a large scale: the negative impact on small town economies and vague legislation. A real reduction of New York’s prison population will create negative effects on small upstate towns that rely on prisons for employment opportunities. Policymakers are cognizant of the fact that if the prison population decreases significantly, the state will be forced to shut down facilities, which will devastate multiple towns in upstate New York. This was demonstrated during a 2001 New York State legislative hearing during which prisoner advocates Michelle Fine and Maria Elena Torre testified to the benefits of correctional education programs. At the completion of their testimony, one state legislator

responded, “You know that in New York, downstate’s crime is upstate’s industry.” As Fine states, “Thus, the crime in the city produces the industry and jobs for the upstate populations.”²⁸ This means that any policy that reduces the New York prison population will likely need to be coupled with an economic stimulus program for upstate.

Vague legislation allows for loose interpretation by the implementing agency, and it gives the agency the opportunity to take only the minimum action required. In the area of correctional education, vague legislation has allowed lawmakers to support increased funding for GED and vocational programs rather than post-secondary programs because they are easier to implement and less contentious to pass. The 2007 Second Chance Act²⁹ is an example of federal legislation that promotes an increase in education programs in prisons, but does not push for or mandate post-secondary education. Many state facilities offer GED programs, vocational programs, and college coursework, and the new legislation only calls for an expansion of these programs. Until post-secondary education programs become as standard as GED and vocational programs, legislation that specifically supports post-secondary education is necessary to motivate states to use public money to fund these programs.

There are structural barriers inherent to post-secondary programs that make policymakers hesitant to fund such programs.³⁰ The environment of prisons makes learning difficult as there are frequent lockdowns, headcounts, hearings, etc. which disrupt the consistency of classes and interrupt the education process. Inmates are often moved among prisons to alleviate overcrowding, interrupting individual post-secondary degree programs, especially if an inmate’s new facility does not offer a degree program. These interruptions make policymakers wary of funding prisoners who may not be able to complete a post-secondary degree because transfers lower the degree of positive impact that would result from a full degree. It is easier for inmates to transfer their gains from substance abuse and anger management counseling because so many prisons offer these programs and because the programs tend to be similarly designed.³¹

Prisoners’ educational attainment level prior to incarceration is a barrier to post-secondary correctional education because a large number have not completed high school or equivalent.³² Many prisoners interested in completing a degree program must take remedial and/or GED classes before they can proceed, and testing the education level of all potential participants can be expensive. In addition to poor academic preparation, many prisoners associate schooling with negative experiences, have poor attitudes towards education, and may lack the necessary self-confidence to succeed.³³ These structural and demographic limitations can be overcome with the right planning, but must be addressed during the program design and funding phases.

Benefits of Post-Secondary Education

Correctional education advocates argue that these programs create a lot of benefit from a little bit of investment. The primary benefit of obtaining a post-secondary degree while incarcerated is a decrease in the recidivism rate. There are also secondary benefits from achieving higher education, namely: increased psychological well-being, fewer inmate infractions, created role models in prisons, increased self-esteem, and a strengthened identity. The secondary benefits also decrease recidivism rates because they help ex-offenders maintain a crime-free life upon release.

Effect on Recidivism Rates

As discussed above, recidivism is caused by a number of factors, but a lack of housing and employment top the list because they greatly affect stability. Programs that address these barriers are likely to be successful at reducing the recidivism rate. Prisoners who obtain more education while incarcerated are shown to have lower recidivism rates than those who do not participate in such programs because the benefits of a degree lead to a more stable lifestyle. While government sponsored research on the effect of correctional education is outdated, numerous scholars have performed studies on a smaller scale that support the claim that higher education reduces recidivism rates.

Studies have shown a strong correlation between post-secondary education and lower recidivism rates. The last government sponsored report that looked at education's effect on recidivism, released in 1987 by the Federal Bureau of Prison's Office of Research and Evaluation, found that recidivism rates dropped as education attainment levels increased during incarceration.

Recidivism rates were inversely related to educational program participation while in prison. The more educational programs successfully completed for each 6 months confined the lower the recidivism rate. For inmates successfully completing one or more courses per each 6 months of their prison term, 35.5 percent recidivated compared to 41.1 percent of those who successfully completed no courses during their prison term.³⁴

While this study was government sponsored and its sample size is quite comprehensive, its age limits the value of the results because, as described above, the demographics of the population have changed drastically since 1987.

The following table shows various studies of recidivism rates in states offering post-secondary programs.

Table 1: Recidivism Rates in Various Studies

Year of Study	Location	Rate of Recidivism	
		Offender Enrolled in a College Program	Offender Not Enrolled in a College Program
1987	Nationwide	35.5percent	41.1percent
1988	Oklahoma	25percent	77percent
1991	New York	26.4percent	44.6percent
1997	Ohio	18percent	40percent

Adapted from Vacca, 2004³⁵

The effect of post-secondary education on recidivism rates fluctuates among the studies, but a study published in 2004 that analyzed fifteen studies from the '90s looked at the link between post-secondary education and recidivism found that, on average, recidivism rates for participants were 46 percent lower than for non-participants.³⁶ The reduction in recidivism rates creates a financial savings for state governments and taxpayers, which is quantified in Table 2 below.

In 2001, City University of New York (CUNY) professors Fine and Torre performed a study at Bedford Hills Correctional Facility, a women's facility in upstate New York. Their study of 274 women found that "women who participated in college while in prison had a 7.7percent return-to-custody rate over three years, while a study tracking female offenders released between 1985 and 1995 revealed a 29.9percent return-to-custody rate over the same period."³⁷ Fine and Torre's study is the most recent, and therefore takes into account the changes in demographics. The concern with this study, and the others listed in Table 1, is that the sample size does not sufficiently represent the prison population. Although there are concerns of quality with the studies, and the effect on recidivism rates differs among studies, there is a clear link across all the studies that correctional education programs have a positive impact on recidivism rates.

Secondary Benefits of Correctional Education

Research on the benefits of correctional education beyond recidivism rates is primarily qualitative and based on interviews with prisoners and administrative personnel. Fine and Torre performed Participatory Action Research (PAR) at Bedford Hills to analyze the impact of college correctional education programs on prisoners, their children, and the

prison environment. Their study includes the statements of participatory female prisoners who reported they have not only gained self-respect and self-assurance, but have learned how to express themselves and their thoughts without immediately resorting to violence.³⁸ The education programs give the women something to care about, and consequently something to lose if they misbehave. The women who have completed a degree gain a sense of accomplishment that translates into self-confidence. Prisons are a means of punishment, but with educational programs, higher levels of self-confidence can be created to contribute to stable lifestyles and reduce future crimes through programmatic support.

Wardens and correctional officers (COs) in this study have witnessed a marked difference in behavioral issues between educated and non-educated inmates.³⁹ For wardens and COs, post-secondary programs give inmates goals to focus on, increase psychological well-being, keep inmates occupied for more hours of the day, which decreases the chance of fights and other infractions and allows students to act as role models for the other inmates. Correctional education programs give inmates the tools they need to communicate with others, think critically, respect themselves and others, and evaluate their actions rationally, which are benefits that transcend quantitative evaluation.

Financial Benefits of Post-Secondary Degree Programs

In 2005, New York spent \$32,000 per inmate, and it costs the Bard Prison Initiative \$2,000 to provide an inmate with one year of college education.⁴⁰ Using this data, if New York provided 100,000 inmates with a two year college education (Associate Degree), upon their release, assuming only ten percent do not recidivate (a conservative assumption), the New York budget would save \$320 million annually upon release of those inmates. See Table 2 below for cost/benefit analyses based on ten percent and 25 percent of participants not recidivating. Not only would the state save money, but there is also a dual benefit to society. In New York, ex-offenders who are able to maintain stable lives and not recidivate would be eligible to vote because they would not be incarcerated (New York does not disenfranchise its offenders with felon status post-release), and the economy would benefit from increased employment, purchasing power, and tax collection, benefits that are not included in the savings totals in Table 2.

Table 2: Financial Benefit of Correctional Education⁴¹

Associate Degrees For Prisoners		
	Non-Recidivate Rate A - 10%	Non-Recidivate Rate B - 25%
Cost for Associate's Degree - 1 Prisoner	(\$4,000)	(\$4,000)
Savings Per Year Non-Recidivate - 1 Prisoner	\$32,000	\$32,000
Cost for 100,000 Associate Degrees	(\$400,000,000)	(\$400,000,000)
Number of Non-Recidivates	10,000	25,000
Total Cost for 100,000 Associate's Degrees	(\$400,000,000)	(\$400,000,000)
Savings Per Year Total Non-Recidivates (Upon Release)	\$320,000,000	\$800,000,000
Assumptions:		
<i>Annual cost for provision of post-secondary degree coursework - \$2,000 (Cost varies by location)</i>		
<i>Annual cost for housing prisoners - \$32,000 (Cost varies by location)</i>		

Methodological Limitations of Current Research

The Federal Bureau of Justice Statistics, nonprofits, and academics have quantitatively measured the benefits of post-secondary degree programs. Studies have demonstrated the positive effects of correctional education, but there are severe limitations to these studies including how a study defines recidivism, the age and quality of the studies, and the presence of selection bias.

The definition of recidivism is complicated by arguments over time frames and how a study defines recidivism. Most studies measure recidivism rates over a three-year period, but some look at two- and five-year periods, leading one to argue that recidivism rates would naturally increase over a longer study. Some academics also argue that recidivism should be measured over a prisoner’s lifetime, not just a short period after release. However, research has shown that a set time frame does not detract from studies’ results; “Chappell’s meta analysis of 1990-1999 studies of post-secondary correctional education and recidivism showed that the recidivism rate did not increase with the time span after release.”⁴² This demonstrates that the discrepancy in time frame across studies does not invalidate the results.

How a study defines recidivism affects the results because not all crimes are detected, and not all those who are arrested are incarcerated. Most studies define recidivism as re-incarceration, but this measure does not take into account the whole picture. If ex-offenders commit a crime (nonviolent or otherwise), they should be considered a recidivate because, while not caught, they have still broken the law and have not changed their ways. However, it is near impossible for studies to take into account ex-offenders who have committed an undetected crime. Additionally, ex-offenders who re-commit and are caught, but

not incarcerated, fall into a similar category because they too are not considered in the studies. Therefore studies to date do not capture the full spectrum of ex-offenders who do or do not re-commit crimes.

Quality of Recidivism Studies

The only government sponsored study to date to have looked at the effect of education attainment while incarcerated on recidivism nationwide was conducted by the Federal Bureau of Prisons in 1987,⁴³ but the results cannot be easily applied to the current prison population, nor are they telling of the New York prison population. Prison population demographics have changed greatly since 1987, namely in regards to race, gender, and reasons for incarceration.

In 1987, the US Sentencing Commission introduced mandatory drug sentencing laws in order to remove racial bias from the sentencing process. It is argued that the new laws are racially biased because one law mandated a stricter sentence for crack cocaine than powder cocaine, and poor minorities primarily use crack cocaine because it is significantly cheaper than powder cocaine. The mandatory sentences assigned to particular drugs and the sentences assigned to drug possession changed the racial demographics of prisons by requiring harsher penalties for drug users than had existed before. Since incarcerated minorities tend to have lower education attainment levels than whites,⁴⁴ the 1987 study does not accurately reflect the current prison demographics.

Selection Bias

Inmates voluntarily participate in post-secondary programs because they understand the benefits of such programs, such as improving their marketability and gaining skills. Tewksbury and Stengel surveyed 281 inmates who were participating in academic (secondary and post-secondary) and vocational programs, and asked them what their main motivation was for attending school. Of the respondents, 49 percent responded “to feel better about myself” while 29 percent responded “to get a job when I get out.”⁴⁵ The researchers make two important notes in the report: “it appears that the foundation for participating is that they now feel positively about their ability to improve themselves as well as their position in society” and “inmates understood the connection between success in the academic programs and success after release.”⁴⁶ These comments from Tewksbury and Stengel’s study mean that inmates who self-select into the education program may already be motivated to take the necessary steps to refrain from returning to prison. If prisoners are already motivated to change their lives upon reentry, then it would be difficult to determine the extent to which education programs reduce recidivism for motivated prisoners.

To address the concern that studies do not control for behavioral characteristics such as motivation and desire for self-improvement, the Correctional Education Association performed an extensive study in

2001 that controlled for such environmental factors. The researchers found that regardless of personal motivation, prisoners who participated in education programs were 29 percent less likely to have been sent back to prison at the end of the three-year study,⁴⁷ and a multivariate analysis predicting recidivism found that “motivation did not predict recidivism and was not a biasing influence on the outcomes studied.”⁴⁸ Another study performed in 1993 “reported there was no significant statistical difference concerning academic achievement between incarcerated inmates and whether they participated voluntarily or not.”⁴⁹ These studies suggest that motivation for a crime-free life upon reentry is not a predictor of recidivism and selection bias may not significantly affect these studies.

Recommendations for Future Research and Increased Awareness

As discussed above, quantitative studies analyzing the link between recidivism rates and post-secondary degrees completed while incarcerated are out-dated, non-reflective of demographics of the current population, do not control for background statistics, and do not sufficiently focus on the effects of post-secondary education. While the quantitative and qualitative evidence strongly suggests a positive correlation between recidivism and education attainment, studies that stand up to criticism are necessary.

New York is the ideal state to perform a comprehensive study because the state contains one-third of the post-secondary programs in the US, creating the possibility to compare the results across four prisons within the demographics of one state (similar to the way standardized testing compares student achievement across a state). A comprehensive study should control for background characteristics, such as prior education, race, age, income, and type of crime. The study should also compare participation methods: one group voluntary, another randomly selected and involuntary, in order to analyze the potential effect of motivation. It is sufficient, and in line with previous studies, to define recidivism as re-incarceration within three years.

Opponents will argue that testing on this level is expensive, difficult to monitor, and may invade the privacy of inmates. The cost of this type of testing is high, but can be conducted efficiently through contracts with nonprofit organizations and Ph.D. students.

Political Motivation

The size of the prison population demands that prisoner issues be brought to the forefront of political discussion. There is not sufficient public discussion of prisoner issues and how to assist the 700,000

inmates who are annually released nationwide. There has been increased discussion in New York City between advocates, particularly the Vera Institute of Justice and Center for Employment Opportunities, and city officials/agencies, particularly the Department of Corrections and Center for Economic Opportunity, about the importance of education and discharge planning. Yet, this discussion needs to rise to the state level, with a greater public focus on post-secondary education. If officials determine that nonprofits provide post-secondary degree services to inmates better than the government can, then the government should contract with the nonprofits and create a public/private partnership. The use of nonprofits to provide services is not uncommon in New York City; the City already contracts with Vera to provide services for the Department of Juvenile Justice, Safe Horizon to provide counseling services for young victims, and MDRC for evaluation of Opportunity NYC. Legislators also need to be aware that benefits to inmates and society increase with the level of education attainment so they can write legislation that appropriate funds specifically for post-secondary programs. The government will only take action once the public demonstrates a sense of urgency on prisoner issues.

The public can motivate state officials through voting and lobbying; if enough constituents argue for reinstatement of public funds for post-secondary programs, policymakers will be forced to listen. The best way to create a sense of urgency is through the media; advocates can get the media's attention through an education campaign and increased awareness in popular media, a tactic that is commonly used by policymakers to promote bills and acts. If popular media reports more frequently on prisoner issues in general and the potential benefits of post-secondary degree programs, they will get the public's attention, and the public will force policymakers to pay attention. Through this process, advocates can bring prisoner issues to the forefront and motivate policymakers to commission new studies that support funding for programs that will reduce the prison population.

Conclusion

The crime wave of the '80s and '90s required new policies that were "tough on crime," and these policies sent large numbers of criminals to prison and jail. The 21st century has witnessed a decrease in crime, yet the prison population continues to rise. While states continue to pour money into prison construction, one-third of inmates are still recidivating. The goal of increased research, and creating a political and public discussion, is to encourage all states to create publicly funded post-secondary education programs in all state correctional facilities in order to reduce recidivism rates. The shift in public opinion towards preventing crime since the '90s suggests that

publicly funded programs may be more politically feasible than they once were.

A post-secondary degree, in conjunction with appropriate discharge planning, gives ex-offenders the support they need to create and maintain a stable life upon release. A degree alone is not sufficient to reduce recidivism on a large scale, but neither is substance abuse and mental health counseling, nor reentry assistance. When combined, these three components are successful because they address the multitude of barriers an inmate faces upon release. While the success rate is greatly increased when these three components are utilized together, there is no panacea that will completely eradicate crime or recidivism. The best that advocates can do is conduct comprehensive studies to understand what does work, create public awareness of the problems, and support those offenders who desire leading crime-free lives upon release.

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The Implications of Chinese Investment on Development in Sub Saharan Africa: *A Zambian Case Study*

Denise M. Ziobro

ABSTRACT:

Over the last four decades the country of Zambia has received the greatest amount of Chinese foreign direct investment in Sub Saharan Africa. This long term investment relationship provides the ideal case study to analyze the effects of foreign direct investment on African development. Throughout this article the author analyzes the Chinese-Zambian investment relationship, Zambian foreign direct investment, and Zambian development levels over the last four decades. The author also completes a statistical analysis to determine the developmental implications of Chinese investment. The article concludes with a series of policy recommendations that, if implemented, will enable the Zambian government to realize greater developmental gains from Chinese investment.

Over the last four decades, a new trend in international relations affecting trade, economic development, and politics has gradually become apparent: increased Chinese investment in Africa, particularly Zambia. From 1979-2002, a period characterized by rapid Chinese-African investment growth and marked investment diversification, Zambia was the largest recipient of Chinese foreign direct investment (FDI) in Sub Saharan Africa.¹ Today, Zambia is the only African nation to be listed among the top ten recipients of Chinese investment worldwide.² What is even more striking about Chinese investment in Zambia is that it spans far beyond traditional Chinese foreign direct investment in Africa's natural resources.³ Recent Chinese investment in Zambia has occurred in the copper, agricultural, and manufacturing sectors and has been responsible for the creation of numerous hospitals as well as improvements in infrastructure and electrical systems.⁴

Although China has had a long-standing economic interest in Africa, substantial research discussing the true implications this investment holds for African development has been nonexistent. Numerous studies have analyzed the effect of Chinese investment on the natural resource sector, the environment, and the occurrence of potential human rights abuses and poor working conditions in Africa, but few have analyzed the consequences this relationship may have on development.

Therefore, given China and Zambia's longstanding economic relationship, Zambia can be viewed as an ideal case study to analyze the effects of FDI on African development. Throughout the remainder of this article, I note the implications of Chinese investment in Zambia and provide recommendations for how the Zambian government can maximize developmental gains from foreign investment.

Chinese Investment in Africa

Africa contains 10percent of the world's population but a staggering 30percent of the world's poor.⁵ In 1970, the percentage of Africa's population living in extreme poverty was 36percent,⁶ yet by the end of the twentieth century, more than 50percent of the continent's population was living in extreme poverty.⁷ This was the result of a substantial decline in economic growth and trade in the continent. In the 1970's, Africa was responsible for 10percent of world trade; however, in 2007, Africa accounted for only 1percent.⁸ Poverty in Africa has been perpetuated by a dire lack of capital and investment that hinders infrastructure creation, educational development, and improvements to the standard of living.

However, as China seeks to sustain its own monumental levels of economic growth, China's trade and investment in Africa has reached unprecedented levels.⁹ Over the last twenty years Chinese-African trade has increased by nearly 450percent.¹⁰ According to a New York Times Report published in July 2006, trade between China and African countries reached \$55 billion in 2006, up from less than \$10 million in the 1980s.¹¹ In addition to investing approximately \$400 million¹² in Africa from 1979 to 2002, China has pledged \$20 billion in future investment projects over the next three years, primarily to finance trade and infrastructure development across the continent.¹³ Historically, China's trade and investment strategies have primarily taken the form of FDI, investments made to acquire enterprises operating outside of the economy of the investor.¹⁴

China's current and future African investments are spread throughout the continent, from "the rehabilitation of the Benguela railway in Angola, to a hotel complex in Sierra Leone, to hydropower dams in Congo, Ethiopia, and Sudan, and to copper mines in the Congo and Zambia."¹⁵ Zambia, with its large supply of mineral resources, is one of the countries that stand to gain the most from Chinese investment.

Zambian Economics

The republic of Zambia, formerly the colony of Northern Rhodesia, became independent from the United Kingdom in 1964.¹⁶ After gaining independence, Zambia was classified as a middle-income

developing country and was considered to be one of the most economically prosperous and successful countries in Sub Saharan Africa due to wealth generated by copper production and trade.¹⁷

Zambia is known primarily as a one-commodity country. Mining and quarrying are responsible for about 90 percent of the country's foreign exchange earnings¹⁸ and have traditionally provided the largest proportion of the country's total GDP.¹⁹ Zambia's abundant supply, successful production, and lucrative exportation of copper have made it one of the world's largest copper producers, increasing the economic well-being and quality of life of its citizens. However, Zambia's heavy reliance on this commodity²⁰ has been problematic for the economy.

In the 1970s, world commodity prices declined substantially. Consequently, Zambian copper production decreased, and the Zambian economy suffered a monumental adverse shock which, in turn, caused a dramatic increase in poverty rates. Zambia has moved from being a major copper producer and potentially one of the continent's richest countries at independence to one of the world's poorest²¹ countries. In Zambia, the percentage of the population classified as living in extreme poverty was 36percent in 1970 but reached 50percent by the end of the century.²²

In addition to the negative consequences of being a single commodity driven economy, Zambia has faced two other great development challenges. Over the last several decades Zambia has suffered devastating effects from the world-wide HIV/AIDS epidemic. "Today, an individual living in Zambia has less chance of reaching age 30 than someone born in England in 1840" during the plague, "and the life expectancy gap continues to widen."²³ Zambia has lost "two-thirds of its trained teachers to HIV/AIDS, and in 2000 two in three agricultural extension workers in the country reported having lost a co-worker to the disease over the past year."²⁴ HIV/AIDS has decimated the Zambian work force by greatly reducing the size and abilities of the working age population.

Zambia has also experienced numerous obstacles and challenges due to a lack of available capital. The lack of capital in Zambia has limited the impact of agricultural and professional extension and training programs, education initiatives, and the creation of infrastructure. To meet its capital needs, Zambia has begun to encourage greater rates of foreign investment and has looked to historical trading partners such as China for development assistance.

Chinese Investment in Zambia: A Mutually Beneficial Relationship

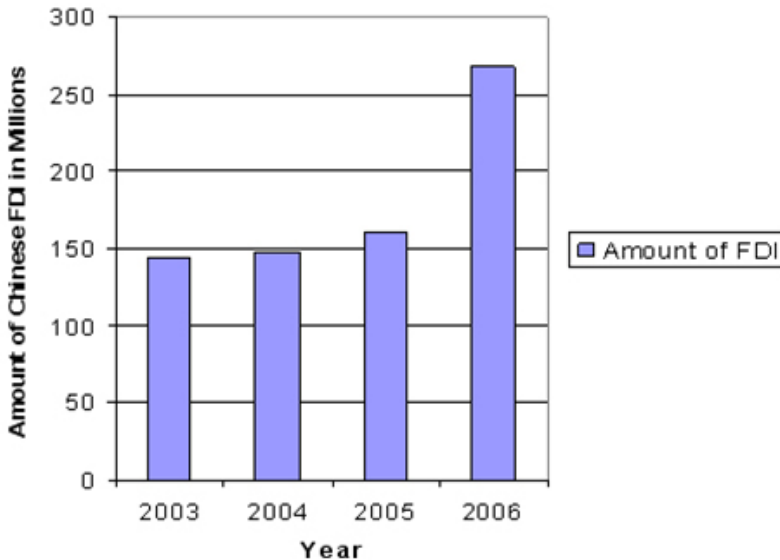
The Zambian-Chinese relationship began almost four decades ago as a means to meet the capital and infrastructure needs of Zambia while supplying China with natural resources to fuel its economic

growth. The first major Chinese investment project was the TAZARA rail line, while copper and minerals have been Zambia's principal export to China. Currently, Zambia is China's leading supplier of copper and other raw metals.²⁵

Over the duration of their relationship, China has invested billions of dollars in Zambia; some of its most notable investments have involved buying coal and copper mines, training Zambian workers, and, most recently, investing in the Zambian agricultural sector.²⁶ Zhao Zhanbin, Counselor of the Chinese Embassy in Zambia, recently stated that Chinese investment in Zambia has tripled over the last few years.²⁷ Furthermore, according to the United Nations Conference on Trade and Development (UNCTAD), Zambia has received over \$100 billion from Chinese investment and aid between 1970 and 2002.²⁸

Even more striking than UNCTAD's estimate was the dramatic increase of Chinese FDI between 2003 and 2006. The graph below illustrates the increased rate of Chinese investment in Zambia over this period. Most notably, between 2005 and 2006, Chinese FDI flow into Zambia increased by nearly 70 percent.

Figure 1: China's FDI flowing in Zambia



Source: National Bureau of Statistics China, 2006 Statistical Bulletin of China's Outward Foreign Direct Investment²⁹

This relationship is not expected to wane any time in the near future. The flow of Chinese FDI into Zambia is predicted to continue to increase due to Chinese dependence on Zambia's large amounts of valuable natural resources. According to a recent New York Times report, China

plans to invest \$800 million in Zambia over the next decade,³⁰ which will result in an estimated 207 percent increase in FDI.

Until recently, Chinese investment in Zambia was devoted solely to enhancing the production of copper and natural resources; however, China has begun to take advantage of the numerous investment opportunities in the Zambian agricultural sector to gain access to new investment opportunities and cheaper agricultural imports. This diversified investment strategy has the potential to have tremendous positive implications for Zambian development.

Zhao Zhanbin argues, “[I]nvestment in Zambia’s various economic sectors such as agriculture would bring huge revenue to the Zambian government and consequently contribute to the country’s gross domestic product.”³¹ Furthermore, Richard M. Chizyuka, the Zambian Permanent Secretary of the Ministry of Agriculture and Co-operatives, notes that there are numerous opportunities for Chinese investment in the agricultural sector including localizing production or irrigation equipment and other agricultural machinery.³² Additionally, Secretary Chizyuka believes additional investment opportunities can occur through “cooperation in fruit as well as cassava, cashew nut, and jatropha production, processing, and marketing.”³³

Investments in Zambian agriculture show greater promise for producing in-country development gains than traditional investment in natural resources. China’s new investment strategy of diversification makes it possible to understand how Chinese investment can be utilized to improve strategies that support development initiatives in Zambia and the whole of Africa. In an attempt to measure the implications Chinese investments hold for Zambian development, this article employs a statistical analysis utilizing Zambian development indicators and data collected by UNCTAD, the United Nations Development Programme (UNDP), and the World Bank.

Statistical Analysis

Currently the true value of Chinese investments in Zambia is unknown, since the majority of information detailing this relationship is classified by the Chinese government. The lack of reliable and comprehensive data makes the statistical analysis determining the implications of Chinese investment on Zambia’s economy, infrastructure, and development challenging. Additionally, data in many Sub-Saharan countries will continue to be limited until the implementation of the United Nations Millennium Development Goals (MDGs) in 2015. According to the UNDP, very few statistical collections were undertaken before the MDGs due to lack of financial or personal resources.³⁴

Model Design

Due to the aforementioned data constraints, observations could only be obtained from the years 1980, 1985, 1990, 1995, 2000, and 2002. Running a regression or multiple regression analysis using only six cases would be ineffective. Therefore, two different correlation analyses are employed to further analyze the relationship between the variables. The first seeks to determine if a relationship exists between the level of Zambian development and total³⁵ amount of FDI flowing into Zambia. The second correlation analysis seeks to determine if a relationship exists between the percent change of Zambian development and the percent change of total FDI flowing into Zambia.

Variables

The first variable reflects levels of development within Zambia. The most widely used variable to measure developmental status is the human developmental index (HDI), a summary composite index that measures a country's average achievements in three basic aspects of human development: health, knowledge, and standard of living.³⁶ The HDI is a complex evaluation and ranking system utilized by the UNDP.³⁷ The level of human development is measured by calculating the life expectancy at birth, the adult literacy rate, the combined gross enrollment ratio for primary, secondary, and tertiary schools, and per capita GDP.³⁸

The second variable captures investment statistics in Zambia. The most widely used variable to measure investment is the level of FDI. Because Chinese investment statistics are unavailable for this time period, data recording total FDI flow into Zambia as collected by the UNCTAD was employed.

Data

Table 1: Data

Year	HDI index	FDI (In Millions)
1980	0.474	61.8
1985	0.485	51.5
1990	0.466	202
1995	0.418	97
2000	0.389	121.7
2002	0.389	82

Source: UNCTAD, UNDP, and World Bank

Statistical Methodology

By studying the correlation between FDI and HDI, it may be possible to ascertain overall observations of investment and its implications for Zambian development, which can then be applied to the Chinese-Zambian relationship.

Correlation Analysis I

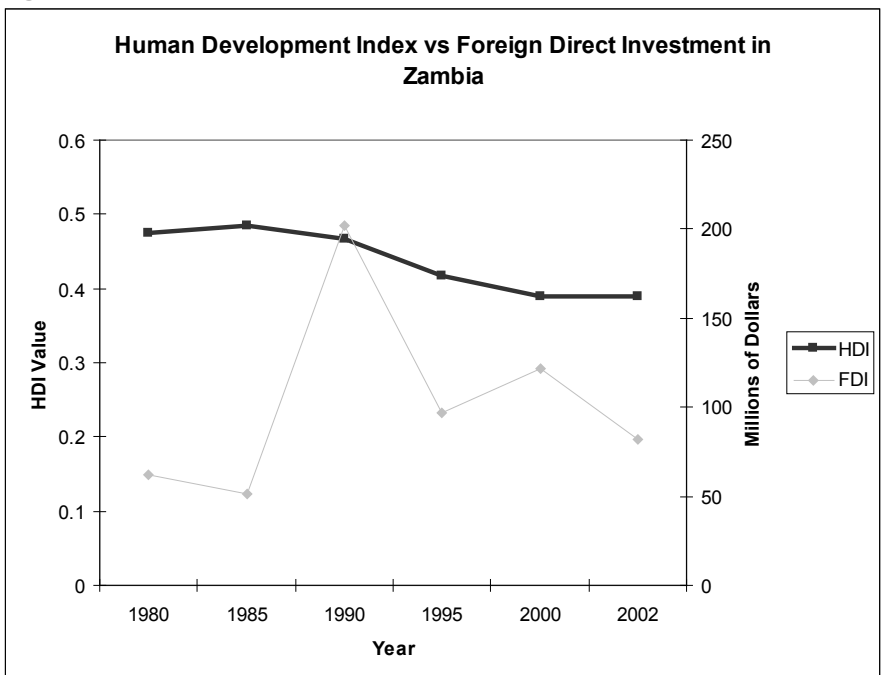
To test whether relationship exists between FDI and development, the below correlation was conducted.

Table 2: Correlation Analysis

	<i>HDI</i>	<i>FDI</i>
<i>HDI</i>	1	
<i>FDI</i>	-0.07563	1

The correlation analysis depicts a weak negative correlation between HDI and FDI. This suggests that FDI and HDI are not very closely related. To truly understand the relationship, a line graph is employed to show how the variables move together over time.

Figure 2: HDI V.S. FDI



Correlation Analysis II

In order to test whether a relationship exists between the percent changes of FDI and percent changes of development (HDI) one final correlation was conducted.

Table 3: Data

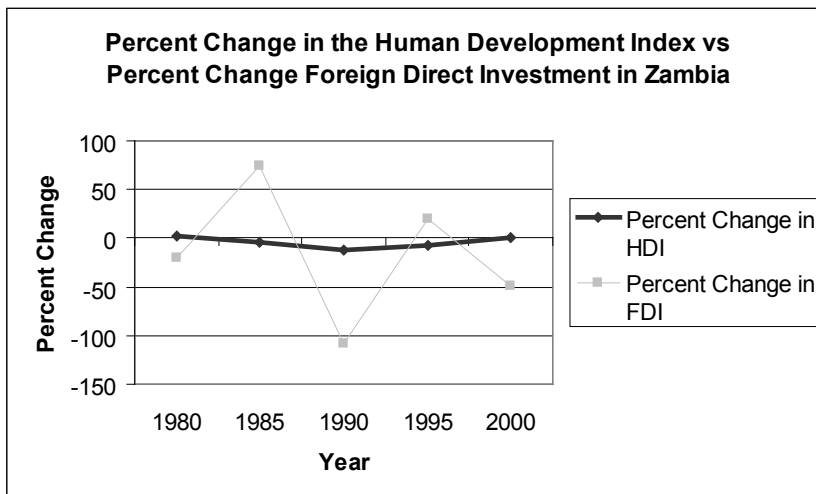
HDI(Percent Changes)	FDI(Percent Changes)
2.268041	-20
-4.07725	74.50495
-11.4833	-108.247
-7.45501	20.29581
0	-48.4146

Table 4: Correlation

	HDI	FDI
HDI	1	
FDI	0.2628	1

This correlation analysis depicts a moderate correlation between HDI and FDI, suggesting that there is a weak relationship between FDI and HDI in Zambia. To complete the analysis, a line graph is used to understand how these two variables move together over time.

Figure 3: Movement of HDI and FDI over Time



The above line graph shows that FDI and HDI levels in Zambia did move together (moderately) between 1980 and 1990. However, after 1990 and until 2002, the two variables began an inverse relationship and moved in converging directions.

Preliminary Findings

The above analysis³⁹ illustrates a moderate correlation exists between FDI and levels of HDI, and a preliminary conclusion can be drawn. Since there is a weak relationship between FDI and HDI, it is likely that other variables have a greater influence on the level of HDI than FDI. This means that the majority of the development benefits of Chinese investment are not being fully captured, as FDI is dramatically increasing and development, as measured by HDI, is decreasing. Therefore, additional policies are needed to enhance and capture the development benefits of FDI.

Conclusion

As the analysis above demonstrates, FDI is only weakly correlated with the level of development in Zambia. Despite recent substantial increases in FDI, levels of development in Zambia have decreased. Although this inverse relationship may be puzzling, there are two possible explanations: a lack of diversified investment in multiple sectors of the Zambian economy and the existence of poor governance that fails to effectively maximize Chinese investments.⁴⁰

In order for Zambia to maximize developmental returns on Chinese investment, active investment promotion policies linked to national development and poverty reduction strategies should be encouraged.⁴¹ There are several policy actions that can be implemented to correct for the inverse investment and development trend in Zambia.

It is highly likely that FDI, primarily Chinese FDI, presents limited opportunities for development gains in Zambia because, although Chinese investment is beginning to enter into other sectors of the Zambian economy, the majority of China's FDI is still targeted toward copper production and extraction.⁴² By Chinese investment failing to enter other sectors of the Zambian economy, developmental advances, such as potential improvements in education, professional training programs, and extension outreach services, are lost. Ultimately, the largest development returns to Chinese investment will only be realized if funds are utilized to diversify the Zambian economy. Currently, numerous sectors of the Zambian economy lack the necessary capital and infrastructure required to be profitable. Furthermore, many Zambians are overly dependent on the copper sector for employment. To solve these problems, Zambia should consider applying Chinese capital toward improving worker training programs and developing other sectors of the economy.

If Chinese investment is leveraged to diversify the Zambian economy, the country's development status has the potential to improve dramatically. In order to achieve and ultimately capture

the developmental implications of Chinese investment the Zambian government must implement a comprehensive policy plan.

Policy Recommendations

In order to realize the gains from investment, the Zambian government must implement policies which facilitate and direct Chinese investment into other sectors of the Zambian economy. In addition, the Zambian government must encourage additional public sector investment in both educational programs and infrastructure creation.

In order to increase economic development, the Zambian government must continue to promote investment, primarily in the agricultural sector, and utilize revenues generated from investment to create infrastructure to improve transportation and improve education and professional training and extension programs.

Investment in the Zambian agricultural sector should be encouraged for two primary reasons. First, investment in agriculture can be used as a potential development strategy to shift the country from a single to a more diversified commodity market. This strategy will make the country less vulnerable to world copper price shocks. Secondly, investing in the agricultural sector is a more sustainable developmental practice than Zambia's current policy. All minerals are exhaustible and most mines and natural resource sources can only be actively accessed for 30 to 40 years.⁴³ Investing in agricultural production and improvements in agricultural productivity is relatively more sustainable in the long-term.

The Zambian government should also invest heavily in education and infrastructure creation. In order to achieve these types of investments, the Zambian government must utilize two investment strategies. First, the Zambian government should encourage China to invest in traditionally under-invested sectors of the Zambian economy. Additionally, the Zambian government should also direct revenues generated from investment to support education and infrastructure programs.

Therefore, Chinese investment must be targeted to enhance education programs and provide professional on-the-job training in a variety of sectors in addition to the copper sector. Increased educational and professional opportunities will spur greater productivity among Zambian workers. Additionally, providing better educational opportunities countrywide will cause the country's education level to rise and thus serve as a catalyst for higher levels of development primarily though enhanced economic productively and improved livelihoods.⁴⁴

Next, the Zambian government should promote public-private partnerships⁴⁵ that will encourage public sector investment such as infrastructure creation and development. Public sector investment has

the potential to increase economic productivity and efficiency by more effectively connecting individuals to local, regional, and country-wide markets. In addition to increasing economic success, infrastructure creation also has the ability to enhance quality of life through the provision of roads, hospitals, and additional services such as greater access to electricity.

In conclusion, Chinese investments will continue to only produce modest developmental gains in Zambia if the development potential from Chinese investment is not captured and utilized effectively. It is the Zambian government's responsibility to implement a series of policy strategies to ensure that Chinese investments are utilized in a way that delivers the highest possible gains in terms of Zambian development.

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34 UNDP Zambia Poverty Report Page 2

35 The total amount of foreign direct investment is utilized in comparison to total Chinese investment in Zambia due to data constraints. Total Chinese FDI flow statistics are unavailable for years prior to 2002. Unfortunately HDI is tabulated approximately every 2-3 years for Zambia. These data constraints influenced the author to utilize total FDI statistics over the given time period, in order to produce preliminary policy recommendations. Please see prior note 24.

36 UNDP- Create your own Data Tables Explanation http://hdrstats.undp.org/buildtables/rc_report.cfm

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40 The Tokyo International Conference on Investment to Africa concluded that sustainable development in Africa is only possible if domestic resources, foreign aid, trade and investment are used efficiently and effectively.

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42 Again because the majority of Chinese investments are classified it is unknown how FDI is distributed in the Zambian economy. However, the majority of Chinese projects have been in the copper industry which leads me to my prior assumption.

43 Denise M. Ziobro Thesis: 39

44 It is assumed that if literacy rises it will cause an increase in HDI thus increasing levels of development.

45 “The motivation behind the public-private partnership (PPP) approach is to maximize interactions between the public and private sectors so as to deliver public services, such as water, electricity or telecommunications, more efficiently and to more people, and to improve the quality and the affordability of access to services provided.” OECD, “Promoting Private Investment for

Development,” <http://www.oecd.org/dataoecd/23/40/36566902.pdf>
The increased usage of Public Private Partnerships as a development strategy is becoming a new trend in international development in Sub Saharan Africa. Since their occurrence in greater numbers has been a recent trend very few case studies analyzing the effects of public private partnerships are available.

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VIEWS & REVIEWS

Perspectives on and analyses of current public policy discourse

Legislating Sex Work: *The Case of Nepal*

Leila Ann McNeill

ABSTRACT:

This article focuses on the legislation that best regulates commercial sexual exploitation and sex trafficking and guarantees rights to trafficked victims, with a case study of Nepal. It addresses prostitution and sex trafficking policy in Asia and the United States, especially through the lens of the three major methods of legislating prostitution—criminalization, legalization (or legal regulation), and decriminalization—in terms of how each approach has influenced and could influence commercial sexual exploitation and trafficking in Asia. The article argues that decriminalization provides the best solution for Nepali women who are trafficked or involved in the sex trade.

Although prostitution legislation is practically as old as legislation itself, the recent global outcry against sex trafficking has propelled this topic to the forefront of current policy debate. This paper will analyze the trends in current prostitution policy in Nepal, Asia, and the United States through the lenses of policy effectiveness, the role of government, and the impact of policy on prostitutes and sex trafficked victims' lives. Decriminalization of the sex trade seems to provide the best options and outcomes for women involved in the sex trade, whether because of trafficking or “choice,” especially in the context of Asia and Nepal.

Sex trafficking transcends borders and has become a problem of international importance. The US Department of State estimates that approximately 600,000 to 800,000 people are trafficked across national borders throughout the world annually.¹ These numbers do not include those people trafficked within their own countries. Human trafficking can be defined simply as the forced or coerced movement of men, women, or children for sale or mandatory labor.² People who are trafficked are often falsely promised job opportunities or marriage and can be used in a variety of ways including work in sweatshops or other demanding physical labor, sexual exploitation, begging, or organ sales. In their “Facts about Human Trafficking” brochure, the State Department lists the major threats of human trafficking: the deprivation of basic human rights and freedoms in a modern form of slavery, a global health risk, and a stimulus to the growth of organized crime.³

The trafficking of women and children for sex makes up a significant portion of the trafficking industry, and the sex industry makes billions of dollars each year. The State Department's *2007 Trafficking in*

Persons Report recognizes sex trafficking as the largest subcategory of modern slavery.⁴ In addition, it notes that around two million children face commercial sexual exploitation every year.⁵ A BBC News article in 2000 noted that the global trade of women and children for sex is estimated to make around \$12 billion a year.⁶ In the same report, BBC News found that the worldwide sex trade makes \$52 billion annually.⁷ A study of prostitution in the United States estimated that around 23 out of every 100,000 people in the US are prostitutes;⁸ for the approximate 303,200,000 people in the United States, the study's Potterat's estimate suggests that there are around 70,000 prostitutes in the US. However, the international estimates, reaching 40 million prostitutes worldwide, are on an even larger *per capita* basis than are the US prostitution estimates.⁹

Definitions

Sex trafficking is the act or attempt of moving, buying, or selling someone into prostitution or aiding someone in such an act or attempt.¹⁰ Although it can even refer to forcing someone to become a prostitute, sex trafficking usually connotes moving someone across national borders for the purpose of forced prostitution. The South Asian Association for Regional Cooperation's (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution defines trafficking as "the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking."¹¹

Commercial sexual exploitation is a situation in which:

- 1) any child is engaged in any type of willing or unwilling prostitution,
- 2) any person is tricked, lured, or otherwise manipulated into becoming or remaining a sex worker,
- 3) a person has to become a sex worker because of economic necessity, and
- 4) a person is not paid for or receives abuse in a commercial sex-based exchange.

The sex industry can be used as an umbrella term to refer to the entire sex for sale business, which includes both the women and children trafficked for sex and those who face commercial sexual exploitation.

Most NGOs working to help sex workers and victims of sex trafficking in Nepal prefer the term sex worker to prostitute because of the negative connotations of the word prostitute.¹² However, others say that the word should continue to be prostitute because the word sex worker legitimizes prostitution as an occupation.¹³ Therefore, for

the purposes of this article, the words sex worker and prostitute will be used synonymously to refer to anyone, child or adult, engaged in selling sex—whether the person is trafficked for sex, commercially exploited, or participant in the sex trade by choice. This article will focus on women and children, rather than men, even though men also prostitute.

Important Considerations in Legislation

One of the most important issues prostitution and sex trafficking policy needs to address is the economic motivations of women entering prostitution and the men demanding the service. Because developing nations (and, in particular, Nepal) often lack governmental welfare and education for impoverished women and children, these nations must analyze whether prostitution actually improves the status of women in that country. By giving women the opportunity to have a job that provides for them and their children, prostitution may be the only real way for a migrant, impoverished woman to better her status and live an economically sufficient life. Prostitution could even provide women an alternative to spousal or familial support, allowing them to be independent property holders and economic decision makers.

The other side of the story, however, is that men often control the sex industry. Without a practical governmental policy (which could mean no policy at all), prostitution can be a form of gender discrimination and violence. Many advocates say that prostitutes are always exploited victims, whether or not they were trafficked. Studies on the mental and emotional effects of prostitution on women seem to give credit to this opinion. A study by Melissa Farley et. al. on 854 current or recent prostitutes in nine countries found that prostitution was highly traumatic in many different contexts.¹⁴ After entering prostitution, seventy-one percent of the respondents were physically assaulted, 63percent were raped, 68percent met criteria for Post Traumatic Stress Disorder (PTSD), and 89percent wanted to escape prostitution but could not because they had no other means of survival.¹⁵ Prostitution researcher Louise Brown says, “Prostitution has to be damned for the dehumanizing, woman-hating activity that it is.”¹⁶ Although Brown’s statement is probably true, policymakers can only decrease prostitution and sex trafficking by giving women, children, and victims of sex trafficking and prostitution the rights to flee and then fight against their assaulters.

Data Considerations

This paper’s overview of prostitution policy focuses on Nepali, as informed by Thai and US, best practices in dealing with prostitution

and sex trafficking. The author spent five months researching prostitution and sex trafficking in Nepal and conducted almost thirty interviews with leaders in national and international, governmental and non-governmental organizations dealing with the sex trade or women's rights, current cabin restaurant workers, a journalist, Nepali government officials, female parliamentarians from three different parties, and the Nepali police force.¹⁷ The author also spent time at a rehabilitation center for victims of sex trafficking and performed a survey of Tribhuvan University anthropology and sociology Master's students on their opinion of the sex trade and sex workers in Nepal. These students' responses are important because their opinions are indicative of those the future leaders of Nepal might espouse.

Asia has seen a proliferation of sex trafficking and prostitution and provides the needed context for Nepali regional sex trafficking and prostitution issues. US policy is also important to study because the US greatly influences international policy on prostitution and sex trafficking and provides monetary and NGO support to combat sex trafficking throughout Asia. The US also presents an interesting case study because of its range in policies (criminalization of prostitution in most of the country and legalization of prostitution in some counties in Nevada) combined with the wealth of recorded academic research on US prostitution and policy.

Studying the current policy debate in the East and the West provides a good picture of the overall debate surrounding sex trafficking and prostitution. Many countries in Asia, including Nepal, and the US are currently debating the legal status of prostitution. Looking at the difference between an economically developed country and the emerging markets of Asia will provide a better picture of what the emerging markets will face on the path of economic development and in the process of globalization. Because prostitutes worldwide face similar challenges and policy structures, best practices can be identified, but then these best practices must be re-interpreted to fit into the specific cultures within these regions. The factors involved in prostitution are different depending on the country because of law enforcement disparities and the prostitutes' personal choices, history of abuse, and economic situation, which are usually colored by their society and culture. The role of NGOs and local government is intrinsic to the success of this process of re-interpretation. NGOs can help with application of law and policy to meet the needs of the women and children on the ground, while providing them with an organizing and powerful advocate.

Prostitution data is relatively limited because of the clandestine nature of prostitution and sex trafficking. Official data, although used throughout the world as fact, cannot be accepted as being reliable or comprehensive because of the underground nature of the sex industry.

Very few studies have focused on quantifying the precise number of prostitutes within a country or region. Most research done on sex trafficking and prostitution is qualitative in scope, and the best quantitative researchers have utilized data they received from surveys completed by sex workers and other informants. This paper's analysis is limited by the fact that numbers, even in the United States, are only rough estimates and not a complete reflection of reality.

Approaches to Legislation

Due to high public concern for the control of prostitution and prostitution's history of fluctuating criminality and intimacy with organized crime and sex trafficking, the legal debate on prostitution is intense. The three main legislative approaches to prostitution policy include criminalization (regulated against and illegal sex trade),¹⁸ legalization (from here forward referred to as legal regulation, or a legal sex trade with over-regulation), and decriminalization (legalized but unregulated sex trade).¹⁹ However, many different policies are within the scope of the above approaches. For example, some theorists argue that prostitution should only be criminalized in terms of pimping, advertising, and soliciting of customers.²⁰ Others take a more radical stance and argue for complete criminalization, legal regulation, or decriminalization.

Criminalization of sex work is legislation aimed at the condemnation and eradication of prostitution.²¹ This method is often criticized on grounds of public health because it helps keep prostitution invisible and unregulated. It also can give too much power to the police, who often use their powers to blackmail, bribe, and harass sex workers.

Criminalization can take on different forms in actual legislation:

- 1) Criminalization of the sale of sexual services penalizes the sex workers.²²
- 2) Criminalization of the purchase of sexual services makes the clients of sex workers the criminals. This method attempts to cut off demand for sex work and is based on the ideology that sex workers are already victimized so the law should not doubly victimize them.²³
- 3) Criminalization of solicitation includes bans on the owning or running of brothels, pimping, and/or publicizing sexual services.²⁴ Current Nepali law criminalizes the sale of sexual services in public places, the purchase and solicitation of sexual services, and pimping and the owning and running of brothels.

Legal regulation occurs when the government legalizes prostitution, gives it legal recognition and definition, and engages in its regulation.²⁵

In effect, legal regulation makes sex work a specifically defined occupation performed only in the context of registered brothels so, under legal regulation, street-based prostitution or sex work under any other context is still illegal. Typically, regulation takes forms such as mandatory health testing for prostitutes and licensing of brothels with strict regulations, such as defined working hours and confinement to the brothel during the weeks of the shift. Only the sex workers in legal brothels pay taxes on their earnings and are obligated to and protected by the law.

Decriminalization of sex work is when the law remains silent about prostitution and the sex trade as a specific profession, while still dealing with such acts as sex trafficking, commercial sexual exploitation, and rape in the criminal law.²⁶ Prostitution is legal but not regulated and brothels may be opened as businesses regulated no differently than any other service business (i.e. a nightclub or restaurant). Anyone, within a certain age limit, can legally perform sexual services on their own time and in the place of their choice, as an independent contractor. All types of sex workers have the same rights as other working people with protection by law and obligation to law and pay taxes on their earnings.

Criminalization

Criminalization of prostitution has not proved to be effective. To date, criminalization of prostitution has not decreased or eliminated it.²⁷ Prostitution is illegal in Thailand, China, and India, but these countries have hundreds of red light areas and thousands of prostitutes, and some of the largest numbers of women and children are sex trafficked to and sexually exploited in these countries.²⁸ Thailand's sex tourism industry is such a great source of profit that the Thai government does not seem to want to reduce or eliminate it.²⁹ Brown notes that anti-slavery legal provisions in these countries "are totally meaningless when a potent mixture of culture and poverty blend to produce a supply of prostitutes, a market full of clients and societies that look the other way."³⁰ Brown's analysis continues with a description of what is at the heart of the Asian and worldwide sex trade: "The law in relation to prostitution as it is written, interpreted and practiced throughout the world reflects the stigmatized role of the sex worker in societies run by and for the benefit of men. [...] Of course women are seen as criminals."³¹ Women "are simultaneously essential but peripheral to the trade," but they are individually of no consequence because they are easily replaced.³²

In countries that criminalize prostitution but do not have effective law enforcement systems, the police can take advantage of the prostitutes by asking for sexual favors from prostitutes or bribing them to keep them out of jail. Kevin Bales writes that Thailand's anti-prostitution

laws have no backing because the police are making greater profits by serving the brothel owners and sex traffickers than by preserving justice and the rights of victimized women and children.³³

Some would point out that the US provides a counterexample to that of Asian criminalization. These proponents argue that because the US actually enforces criminalization this policy can be more effective. Most states in the US criminalize prostitution, and the US has a low percentage of prostitutes *per capita* compared to others in the world. Many American and other Western tourists travel to Asia for sex tourism because the laws in their own countries better enforce their legal codes against sexual exploitation. Criminalization in the US has come with its own problems, however.

By forcing prostitutes to hide, the government creates more opportunities for crime. Criminalization pushes prostitution into the underground network of organized crime, taking away the prostitute's legal protection and ability to go to the police in event of rape.³⁴ In this system, prostitutes must work in places where prostitution is either hidden or tolerated by police, which means the situation is more dangerous. Prostitutes must also rely more on pimps and organized crime syndicates for protection from police. This reliance creates a cycle of dependence and cohesion, similar to a gang situation, in which the prostitute could find it difficult to leave because of group pressures. In addition, a prostitute finds leaving and finding a "respectable" job harder because of her criminal background.³⁵ Because most prostitutes see prostitution as a transitional job due to economic necessity rather than desire to remain in the profession, criminalization is not a good strategy to empower them in finding other job options.³⁶

Criminalizing prostitution may only make matters worse for victims of sex trafficking.³⁷ Because prostitution is underground, sex trafficked victims face the same, if not worse, problems as prostitutes in leaving the trade. Under criminalization, because prostitution is hidden or tolerated by police, sex trafficking victims either have no access to law authorities or are overlooked. Even if a prostitute revealed that she were sex trafficked, she would still be stigmatized by the fact that she had been involved in prostitution. Furthermore, criminalization gives pimps and organized crime networks the leeway to operate more powerful sex trafficking rings.

Criminalization of prostitutes, or treating prostitutes as criminals and social deviants, is inconsistent with defining prostitutes as exploited. The US government's stance on prostitution is conflicted in this way. Although the US government adopted a policy decision that prostitution is inherently injurious and dehumanizing to the prostitute and fuels the growth of sex trafficking in December 2002,³⁸ the government overlooks this fact in its criminalization of prostitutes.

Legal Regulation

Those who push for legalization and governmental regulation of prostitution argue from the viewpoint that prostitutes chose their own profession, meaning prostitution is a business transaction whereby the client goes to a worker to pay for and receive an agreed upon sexual service.³⁹ In this view, prostitution is manual, physical labor, not intrinsically different from construction or beauty salon work, in which the worker can attain varying levels of expertise. These motivations behind legal regulation are similar to those behind decriminalization. However, full governmental legalization and regulation typically regulates and limits the sex trade by only allowing prostitution in the context of a registered brothel. Proponents of legal regulation often cite the proposed health benefits of sex trade regulation because prostitutes can be forced to use condoms, undergo weekly health examinations, be confined to a certain limited working area, and be watched more closely by the police.⁴⁰

However, like criminalization, such governmental regulation has also proven to be ineffective. Brothel owners often overlook mandatory condom use if the client agrees to pay a higher price.⁴¹ Mandatory health checks for prostitutes rather than for both prostitutes and clients are unequal and unfair and result in more stigmatization for the prostitute. Additionally, other limitations or confinements of prostitution have usually resulted in an underground network of prostitutes similar to that found with the criminalization of prostitution because some prostitutes do not want to undergo such stigmatizing measures.

Legal regulation has also been unsuccessful in achieving rights for prostitutes and eradicating sex trafficking. It allows the state to name sex industry zones, but it raises critical questions about how to stop sex trafficking of women and get those who choose into a regulated form of prostitution. Several countries, including Belgium, the Netherlands, England, Guatemala, Brazil, and Mexico, have some form of legalized prostitution. However, legal regulation of prostitution has often proved to be legalized exploitation, with prostitutes working long hours, being limited in their movements outside the brothels, and having many clients per day with little right to refuse a client.⁴² In these systems, pimps appear to still control the business, and the police appear to have more reason to arrest prostitutes, especially streetwalkers, outside of legal brothels rather than their pimps because prostitutes are the most visible actors in the sex trade.

The legal regulation of prostitution in some counties of Nevada has resulted in a system that has stigmatized prostitutes and created such poor working conditions that many prostitutes would rather work illegally than work under the strict sanctions of the regulated brothels.⁴³ In another study of legalized prostitution in Nevada, researchers Rita Brock and Susan Thistlethwaite write that half of the prostitutes' fees go

to the brothel owner.⁴⁴ The prostitute usually must pay room and board at the brothel and, if a taxi driver drives a client to the brothel, the prostitutes' fees take another cut in payment for the driver's referral.

Some advocates believe that regulated prostitution (whether by legalization or decriminalization) undercuts the true harms prostitution has upon the prostitute. A *Primer on Prostitution Policies* dealing with prostitution law in the Philippines notes, "Prostitution is not a choice. The routine violence of prostitution mocks free choice and the pretense that it is employment exacerbates women's second-class status."⁴⁵ The *Primer* also calls prostitution "paid rape."⁴⁶ This argument contends that, even more so than decriminalization, the legal regulation, and thus the government's legitimization, of a so-called sex profession should not be accepted on moral grounds because prostitutes do not freely choose prostitution and because prostitution is a form of gender violence.

Decriminalization

Some current policymakers, economists, NGOs, and feminists are advocating for a decriminalized sex trade in which prostitution is legal but treated and regulated only as any other profession would be. Prostitutes' rights NGOs, such as the North American Task Force on Prostitution and COYOTE, advance the full decriminalization of prostitution, or the removal of laws against prostitution and consensual adult sexual activity. Although the baseline assumptions of decriminalization and legal regulation are similar, decriminalization is different in that it does not regulate prostitution any differently than any other business and does not force prostitutes to work in a regulated brothel. Lenore Kuo, in her argument for decriminalization of prostitution in the US, contends that support policies for prostitutes need to be similar to policies that all women need, such as the provision of social services, incentives improving women's economic opportunities, and support for those suffering from abuse and exploitation.⁴⁷

Decriminalization would allow for prostitutes to become businesswomen in the sale of sexual services under their own authority and personal preferences. Working hours and choice of customers would be at the prostitute's prerogative and prostitutes could organize in cooperatives or brothels if they wished to do so. Pimps would be less likely to control this system because women would have access to help from the police in the event of abuse and be able to change working situations if uncomfortable with the working conditions. By either opening businesses in the sale of sexual services or becoming independent contractors, prostitutes' income would be taxed and the trade would be regulated under ordinary commercial business and income tax laws.

In this way, decriminalization would provide more money for

support systems for prostitutes by transferring money and police efforts away from policing and imprisoning prostitutes to support services and policing those who traffic and those who exploit prostitutes. This system could also benefit victims of sex trafficking and most likely decrease sex trafficking as a whole. Upala Banerjee argues that “exploitation of women will diminish if other factors come into place.”⁴⁸ Two of the top factors she lists include overall poverty reduction and changes in social mores, which both could come about through decriminalization of prostitution.⁴⁹ If prostitution were decriminalized, people would have no legal grounds to stigmatize prostitutes. By focusing laws on sexual exploitation and sex trafficking rather than on prostitution, sexually exploited women would feel more empowered in going to the police in the event of rape, trafficking, or forced prostitution. In addition, the SA Foundation, a Canadian NGO dedicated to helping women and girls who were prostituted or trafficked for sex, believes that prostitutes themselves should be decriminalized because they “should not be penalized for their own exploitation.”⁵⁰

A common method of decriminalizing prostitution comes in the form of decriminalizing prostitutes (i.e. making prostitutes legal) but criminalizing the clients of prostitutes and other actors in the sex trade, such as pimps. The SA Foundation advocates this approach. The sex traffickers, pimps, and sex workers’ clients would be punished with varying degrees of severity: sex traffickers and pimps being more harshly punished than the clients. For example, in current Nepali law, sex traffickers could be punished for up to twenty years in prison; whereas, a sex worker’s client could be punished with only a few months’ imprisonment.⁵¹ Criminalization of clients could diminish the demand for prostitutes, and thereby reduce prostitution. After Sweden criminalized the purchase of sexual services in 1998, street prostitution declined, more prostitutes contacted supportive NGOs for assistance, and public support for the law was high.⁵²

However, this semi-decriminalization is problematic. Trading one legal inequality (criminalization of only prostitutes) for another is not just to all actors involved in prostitution. Because the client of a sex worker would usually be found in the prostitute’s presence and have more money with which to pay a bribe, criminalizing clients could cause the prostitute to be abused, bribed, or treated as a criminal by the police as well. In addition, the act of prostitution would still be stigmatized and illegal so prostitutes and sex trafficked victims would face problems similar to those faced under complete criminalization, such as a fear of the police. Because of this stigma, underground prostitution rings would still exist. Especially in developing countries, such as Nepal and other countries in Asia, where law enforcement may be corrupt or ineffective, the clients of sex workers should not be criminalized so that police can focus on the worst criminals. Because women in these

circumstances usually have few other options, criminalizing the clients could also diminish a sex worker's earnings.

Case Study of Nepal

Today's Nepal, with its changing government and political situation, is facing the challenge of constructing a new constitution. January 15, 2007 ushered in a new interim constitution and parliament that includes Maoist leaders and strips the monarchy of power. Everything from human rights to property rights is being revised and is open for discussion. One important issue that is being discussed is what to do about Nepali sex workers and victims of sex trafficking. Many organizations take a radical stance: some promoting the full legalization and legal regulation of prostitution and others desiring to enforce its criminalization. However, some organizations have come to a middle-ground policy approach.

In Nepal, prostitution is stigmatized and mainly criminalized, which makes prostitution and sex trafficking divisive and guarded issues to discuss. Over 50 NGOs currently work to stop sex trafficking in Nepal, but still numbers as high as 5,000 to 10,000 girls are quoted as being trafficked to and from Nepal each year.⁵³ Much of the problem lies in constructing policies flexible enough to punish the true criminals of the sex trade—pimps, madams, traffickers, and brothel owners—while allowing trafficked victims and sex workers access to legal protection. Other problems include enforcement, community awareness, the unequal treatment of women, increased migration due to economic and personal hardships and the political conflict, people's distrust of the court system, and the failure to address the economic supply/demand cycle of the sex trade.

A new bill, called the *Bill Controlling Human Selling and Trafficking* of 2006, was passed in Parliament in the summer of 2007. This bill, an update from the antiquated 1986 human trafficking bill, and others like it have been debated in Parliament since 2001. For six years, discussions continued but nothing happened, mostly due to the political conflict and governmental breakdowns and changes.

During the political turmoil, the government was not actively focused on effective policy-making or human rights initiatives and is still struggling to provide equal representation and create a democratic government. Even so, many NGOs and the government Ministry of Women, Children, and Social Welfare (MWCSW) pushed to pass the new anti human trafficking bill.

Nepali Sex Trade, Trafficking Situation, and Current Legislation

The sex trade inside Nepal has been taking place since the *Malla* period four to five hundred years ago.⁵⁴ The quoted numbers of men, women,

and children involved in Nepal's internal sex trade range from 5,000 to 50,000.⁵⁵ NGOs estimate that from five to twenty thousand women and children are trafficked (not just sex trafficked) from Nepal to India alone each year.⁵⁶ Currently, somewhere between 30,000 and 200,000 Nepali women and children may be working in the brothels of India.⁵⁷ Nepal is known as a major source country for human trafficking in South Asia.⁵⁸ Most Nepali women and children are sex trafficked to India, but Gulf countries, Thailand, Malaysia, Vietnam, and Hong Kong are other possible destinations.⁵⁹

In Nepal, the policies that address the sex trade lie mostly in anti human trafficking acts. The new anti human trafficking bill criminalizes the purchase of sexual services. The significant differences between this bill and the 1986 Act are the following: this bill offers a better and broader definition of human trafficking, gives harsher punishments for traffickers, sellers, and buyers of humans or human organs, allows the police to search and arrest traffickers without a warrant, provides for a government rehabilitation center, promotes the victims' privacy in reporting and throughout the case, and allocates compensation for the victim. The maximum punishment is up to 20 years imprisonment and a 100,000-500,000 NR fine (around 1,500-8,000 USD), while the minimum punishment can be as little as 1 month imprisonment (for sex worker's clients).

Some significant problems arise from this bill. Most of these problems were discussed at the Forum for Women, Law, and Development (FWLD) and Daywalka Foundation sponsored National Consultation on the Anti-Trafficking Bill on March 30, 2007. Problems include the following: children are defined as people under 16, not under 18; this bill might make it too easy for the police to arrest innocent so-called traffickers; punishments are harsher for someone who sells or buys a person outside the country than inside the country (they should be the same); and only Nepali citizens count as victims.⁶⁰ There is also no mechanism for making police stop exploiting and harassing sex workers or for implementation of this policy.

In general, Nepali women face more economic insecurity than do men because their access to livestock, land, and real estate is usually dependent on their status as a daughter, wife, or mother and often their sexuality.⁶¹ Nepali laws have historically discriminated against women in property laws and inheritance rights. *Aungsabanda*, a law governing the division of ancestral property among heirs, gives only male heirs the right to ancestral property that has not been disposed of at the parents' death.⁶² The only way a woman can share in this property is to remain sexually chaste and unmarried to the age of 35. Any subsequent sexual delinquencies or marriage would result in the woman having to forfeit the property.

Many other Nepali laws discriminate against women despite the fact that Nepal's Constitution prohibits unequal treatment based on sex and Nepal has signed various human rights conventions such as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Discriminatory laws have been found in many different arenas, including nationality and citizenship, education, trafficking and sexual abuse, marriage and family, and legal procedure and court proceedings rights laws. One example is that a daughter must have her male relative's permission before traveling, working, or studying abroad.

Current Nepali advertisements against sex trafficking highlight these discriminations. Translated literally, the advertisement below says, "BE WATCHFUL: Your girls might be sold in the name of employment" (in the large central text) and "Contact us if you are suspicious" (in the small black text).⁶³ This signboard can be interpreted to mean, "WARNING: Please be aware: your girl children (women) might be sold to prostitution in the false pretense of employment away from home. Please contact the authorities if you are suspicious of anyone making such offers."⁶⁴



This campaign against trafficking focuses on showing male relatives that they need to protect their women from harm. The ad promotes the fear of a woman traveling or going somewhere by herself and her need of increased protection from her male relatives because of her sexuality.

The good news is that these discriminatory practices are slowly changing. Recently, women can transfer citizenship to their spouse and children, when previously only a man could.⁶⁵ Since April 2007, a woman can file cases of marital rape and domestic violence in the court.

Nepali Law Enforcement

Police raids of public places are acceptable under the *Public Offense Act* 2027 BS. If someone does get arrested for prostitution, it is usually under

this act, with a punishment of up to 10,000 NRs (around 160 USD) for breaking the peace, vulgar gestures, or activities in public places. Police can use this act to raid public places for prostitution (i.e. hotels and massage parlors) because the place is supposed to be used for activities other than prostitution. Raiding is the most common form of policing for prostitution in Nepal. For example, the Kathmandu police raided six massage centers and captured 27 men and women doing illegal sex work in 2004.⁶⁶ In the Nepali news, raids such as these are commonly used as public relations campaigns by the police with little actual effect. More commonly, police ask for bribes from the sex workers and managers at restaurants, massage parlors, and hotels to avoid actually raiding these establishments and arresting the workers.

Implementation is the greatest problem concerning any type of Act passed in Nepal. Retired Inspector General of the Police Govind Thapa posits that the problem of corruption and lack of enforcement by the police stems from the way the police was set up in 1951, when the Rana regime reformed the police force through an amalgamation of the militias.⁶⁷ The ideology of this reformation was that the police were devoted to protecting the government in all circumstances, not to helping the people. Even now, the police have conflicting ideas of the interim government that will probably not be settled until new elections take place and a new constitution is written. In addition, they have been actively involved in dealing with the Maoist insurgency and other political rights demonstrations so they have not had as much time to devote to anti trafficking measures as they did previously.

Nepali Courts

Justice in Nepali courts can be a long and harrowing process for a victim of sex trafficking or sexual exploitation. If a victim goes to police, the police have to go to the nearest court and gain permission to investigate before they can issue a warrant for an accused trafficker's arrest. By the time the police obtain permission, the traffickers usually leave or change their identity. In addition, the police have to take the victim's statement in front of a public prosecutor and the victim's statement must be verified by the court.

The court system usually takes a long time to decide trafficking cases and asks the victim to recount the story of being trafficked many times. In addition, the victim is cross-examined and grilled by the defense in the determination of whether she was raped and trafficked.⁶⁸ The women and children's cell police deputy superintendent Pooja Singh said that the police do not have any counseling rooms or appropriate equipment for recording the victim's testimony.⁶⁹ Even though the 1986 anti human trafficking act lays the burden of proof on the offender, in actuality the victim is often the one who bears this burden. Any woman

sex worker is treated as if she somehow put herself in the position to be exploited. In this way, the police and courts often treat victims as criminals.

The following chart shows how many human trafficking cases in general were reported to the Nepali police and courts from 1997 to 2006:

Table 1: Number of Trafficking Cases Reported to Police and Courts 1997-2006

Fiscal Year	Police	District Court	Appellate	Supreme
1997/8	130	317	159	41
1998/9	110	291	126	53
1999/2000	120	321	234	59
2000/1	90	244	152	67
2001/2	40	136	142	74
2002/3	54	367	72	134
2003/4	56	432	43	131
2004/5	72	(unknown)	(unknown)	(unknown)
2005/6	97	(unknown)	(unknown)	(unknown)

Source: Nepal Police Human Trafficking Cases Reported 2063 2006b and Chief Attorney's Office Annual Report 2003

Of the thousands of men, women, and children reportedly trafficked each year, only a few cases are actually taken to justice. From 2001-2005, the Maoist insurgency most likely contributed to the police's lack of human trafficking cases because the police were busier during this time. The significant difference between the number of projected incidences of trafficking and the actual court cases of trafficking could be due to lack of willingness of the victim to file the case and the lack of rescue of the trafficked victims. Many trafficked victims fail to file cases because they lack confidence in the police and justice system and fear social stigma, bribes, threats, the perpetrators, or personal shame.⁷⁰ Because many times the person was trafficked by a family or community member, family and social pressures also play a large role in lack of reporting.

Nepali Opinions on Sex Trade Regulation

Almost everyone interviewed for this paper in Nepal said that the legal regulation of sex work was not possible in the country at present. Some said that it may come someday when the discrimination against women in Nepal diminishes and when women can choose prostitution as a profession instead of by compulsion. A doctor thought the sex trade should be regulated somehow because she sees how many female sex workers are being exploited by their clients.⁷¹ However, most said that sex work should never be legally regulated.

Sex workers find a modicum of safety in being unknown. Legal regulation would pinpoint who the sex workers are so they would be vulnerable to public discrimination.⁷² Interestingly, 60percent of the 30 Nepali sociology and anthropology Master's students surveyed said they thought society's views about sex workers would change if sex work were legal, with 70percent thinking that Nepali society's current opinion of sex workers is that they are bad people. However, fewer (37percent) thought sex work should be legal, and only 33percent said that sex workers would be accepted by their families and in their communities if sex work were legal.

Legal regulation does not hamper the pimps and brothel owners, while exploiting the sex workers.⁷³ Pimps and brothel owners are still the ones making the profits, maybe more so because the sex workers cannot work as independent agents in the closed, legal market, but would have to move into the illegal, underground sex trade, which would almost certainly continue. Most sex workers do not want to open themselves up to public discrimination or government regulation.⁷⁴

Regulation of the sex trade is seemingly impossible for the Nepali government and police force at this time. Because the Nepali government is still reeling from political upheaval, the government cannot provide its people simple necessities like food, water, petrol, and education. The Nepali police do not have enough resources to fight even human trafficking at this point. Finding a better approach than either full legal regulation or complete criminalization is possible. Although Nepal's new anti-trafficking act is on the right track, more should be done.

Many Nepalis think the customers of sex workers should be punished.⁷⁵ Some believe the criminalization of the clients as outlined in the new anti human trafficking bill could decrease the numbers of clients willing to take the risk of punishment. However, the customers have a different opinion. One male customer described the difficulties closing cabin and dance restaurants or criminalizing clients would present: "The desire to intermingle and have sexual relations with the opposite sex is a natural phenomenon. We would seek alternate places to gratify ourselves if there were no female employees in these restaurants."⁷⁶ Prostitution will always have some demand, and the sex workers, not the clients, are historically the ones who are punished by the police and would still be more vulnerable due to police corruption. Therefore, the government must find a way to minimize the exploitation and abuse of prostitutes in spite of this demand.

Conclusion and Policy Recommendation

The Nepali and Thai governments should decriminalize prostitutes because the prostitutes are being actively exploited and abused and should not be punished any further by the legal authorities. The entire sex trade, however, should not be decriminalized. All parties involved in

trafficking anyone for sex and the pimps or madams that force someone into unwilling prostitution should be criminalized. This approach appears to have the highest potential for success because it maintains sex trafficked victims and prostitutes' rights while decreasing organized crime related to prostitution and sex trafficking.

Decriminalization does not mean complete government laxity in policies related to prostitution-specific business. No one under the legal marriage or drinking age should be allowed to prostitute because, if the government does not think the person is old enough to enter a marital relationship or has enough judgment to drink alcohol safely, that person should not be legally old enough to sell sex. In addition, within the sex industry, sex and alcohol are usually inseparable and children are not developmentally or emotionally able to understand the consequences that come from selling sex. Instead of punishing or sending underage prostitutes back to abusive homes or governmental programs, these young people should be referred to non-governmental organizations specifically designed to help victims of sexual abuse, trafficking, and prostitution. Legal-age prostitutes should not have to undergo any additional surveillance by the police, such as filing fingerprints, carrying prostitute ID cards, or undergoing regular government health examinations. However, health services and HIV/AIDS and STD testing should be available to sex workers.

The policies suggested above should be used in combination with support-oriented policies. Basic advancements such as compulsory education and support structures for poor women may prove to best prevent prostitution. The Nepali government should allow prostitutes and sex trafficked victims a mechanism by which they can leave the sex trade if they desire by directing them to private organizations set up for rehabilitation. By correctly differentiating between the criminals and the victims, prostitution and sex trafficking law will not only be more ethical but also help in the prevention of true crime and exploitation.

Whether decriminalization betters the situation of prostitutes and sex trafficked victims should serve as the evaluation measure used to determine its effectiveness. In the end, if decriminalization is a credible policy, prostitutes and sex trafficked victims should have better access to the police and medical and rehabilitation services, the sex trade should not be controlled by pimps, and the women who join the sex trade should have more choice as to where, when, and how to sell sex. Decriminalization may or may not have any bearing on decreasing the numbers of sex trafficked women and children. However, it should allow these women and children better access to justice against their traffickers; and, by default, eventually decrease the numbers of women and children trafficked for sex.

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The Posse Comitatus Act and the Government Response to Hurricane Katrina

Robert Tice Lalka

ABSTRACT:

This paper provides a comprehensive narrative of the federal, state, and local responses in the immediate aftermath of Hurricane Katrina, while also focusing on how perceptions regarding the longstanding principle of posse comitatus negatively influenced crisis decision-making. Arguing that in legal, policy, and historical precedent, the Posse Comitatus Act is relevant only as a particular statute that exemplifies a much larger principle, the author reveals ways in which a better understanding of the appropriate context might have changed the mismanagement of the crisis. In the end, the author argues that, instead of taking initiative during this time of crisis, politicians in New Orleans, Baton Rouge, and Washington allowed a Byzantine set of legal codes to justify petty politics.

On September 2, 2005, New Orleans Mayor C. Ray Nagin called into Garland Robinette's show on WWL-AM. Robinette had maintained his broadcast even in the midst of the most devastating natural disaster in American history, and he was taken aback when his program became a public forum for the enraged mayor to vent his frustrations. After telling Robinette that the federal government should "get their asses moving to New Orleans," Nagin was asked, "Do you believe that the president is seeing this, holding a news conference on it but can't do anything until [Louisiana Governor] Kathleen Blanco requested him to do it? And do you know whether or not she has made that request?" Exasperated, Nagin responded by saying that "There is nothing happening. And they're feeding the public a line of bull and they're spinning, and people are dying down here."¹

Nagin's tirade continued for minutes before Robinette could manage to get a word in edgewise. This expletive-laced harangue was filled with repeated pleas of "I need reinforcements. I need troops, man," and appeals for the public to "organize people to write letters and make calls to their congressmen, to the president, to the governor."² For those New Orleanians listening to such a candid display of the mayor's frustration over the relief effort, it became all too clear just how serious

the breakdown in intergovernmental communication had become. Nagin blamed both the failed crisis response system and those in charge of it, but most of his frustration stemmed from a belief that leaders in Baton Rouge and Washington had failed the City of New Orleans and he directed his anger at individuals more than systems. “Don’t tell me 40,000 people are coming here. They’re not here. It’s too doggone late,” he lamented. “Now get off your asses and do something, and let’s fix the biggest goddamn crisis in the history of this country.”³

In the weeks following Hurricane Katrina, the American media sought answers regarding what could have been done differently. Years later, answers are still being sought. For even though Katrina was a truly unprecedented natural disaster, the striking images of New Orleanians stranded on rooftops and the senseless chaos of looting on Canal Street also told of a manmade disaster. The media’s coverage of the storm stunned the public, and this shock to the collective American consciousness, and collective conscience, soon raised the question: “How could this happen *in America?*” Yet fingers were pointed, resignations were issued, and outrage soon subsided over the months that followed. As media attention turned to other issues, the procession of official government audits, congressional reviews, and crisis response plan revisions have come to pass largely undetected by the general public. This essay will analyze the specific influence of the Posse Comitatus Act on crisis decision-making at the local, state, and national levels to contextualize how and why the unconscionable governance breakdowns during Hurricane Katrina occurred. As this analysis will show, government actors allowed for a law that was complicated and essentially immaterial for these circumstances to feed into petty politics, thus slowing their crisis response efforts and exacerbating the disaster.

The Legal History of the Posse Comitatus Act

The law at the center of this debate is the Posse Comitatus Act, 18 US Code Section 1385 (hereinafter, PCA). Originally passed on June 18, 1878, as a Reconstruction Era limitation on federal powers, the full act reads as follows: “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”⁴ To use federal military forces as a posse comitatus, which literally means “force of the county” in Latin, is thus forbidden by US Code Title 18; yet this brief statute is commonly misinterpreted to read as if it absolutely prohibits “martial law,” entirely forbidding the US military from enforcing domestic law, no matter the circumstances. At no time has there been greater misunderstanding surrounding it than with the government’s Hurricane Katrina relief efforts in the city of New Orleans.

As Colonel John R. Brinkerhoff reminded his readers in an article from the Department of Homeland Security's journal in February 2002, the PCA must be considered within its historical context. Brinkerhoff, who served as FEMA acting associate director for national preparedness from 1981 to 1983, argued that commentators have traded misunderstandings of the PCA back and forth for years, so that "much of what has been said and written about the Posse Comitatus Act is just plain nonsense," and "[s]eldom has so much been derived from so little."⁵ From a historical perspective, this law came into being following the Compromise of 1877, the deal that was struck when Samuel Tilden won a majority of the popular vote in the presidential election of 1876 but Rutherford B. Hayes won the Electoral College by a single vote. In order to reach a compromise to resolve the dispute, Tilden agreed to concede the election on the condition that Hayes would end Reconstruction and federal troops would be removed from the South. Southerners had been unable to police themselves since the end of the Civil War, and with the end of the Reconstruction Era, the PCA was added as part of how they would regain the authority to police themselves by removing federal troops from that role.⁶

From this perspective, Brinkerhoff posited that the PCA was not "enacted to prevent members of military services from acting as a national police force. It was enacted to prevent the Army from being abused by having its soldiers pressed into service as police officers (a posse) by local law enforcement officials in the post-Reconstruction South."⁷ Since this time, the PCA has been amended twice: in 1959 to make it applicable to Alaska and in 1994 to remove the limitation that the maximum fine for violating the act would be \$10,000.⁸ Brinkerhoff correctly asserted that the national understanding of the PCA has become far removed from the original purpose of the law in its historical context, considering that "the intent of the act was not to preclude the Army from enforcing the law but instead was designed to allow the Army to do this only when directed to do so by the President or Congress."⁹

Other scholars have agreed with Brinkerhoff's assertions about the perception of the PCA being dissociated from its original intent. In an article from October 2000 titled "The Myth of Posse Comitatus," Major Craig T. Trebilcock wrote that "Under both the statutory and constitutional exceptions that have permitted the use of the military in law enforcement since 1980, the president has ample authority to employ the military in homeland defense."¹⁰ Timothy Edgar of the ACLU has called this "the dirty little secret about the Posse Comitatus Act."¹¹ In reality, the PCA does little to restrain the president's actions during a disaster; and since 1878, the act has been deemed inapplicable to numerous situations, including the use of the Coast Guard, the utilization of military resources in the "war on drugs," and the desegregation of public schools, just to name a few. More recently,

California Governor Pete Wilson asked for troops to quell the Rodney King race riots in 1992 and active-duty military forces were used in police security roles during the 1996 Olympics in Atlanta – these are just two of several such examples of using military forces for domestic security.¹²

While the PCA exemplifies the broader constitutional principle that all powers not expressly granted to the federal government are reserved to the states, this act rarely precludes the use of US military assets in domestic crises. In reality, this particular rule becomes subsumed by its many exceptions, namely those times when the 1807 Insurrection Act, 10 US Code Sections 330-335, takes precedent and “unlawful obstructions, combinations, or assemblages, or rebellion against the United States” make it so that federal or local laws cannot be preserved.¹³ Thus in statute, policy, and historical precedent, the PCA is relevant only as a very specific statute that exemplifies a much larger principle that touches many aspects of American Constitutional law, and it does not prevent military personnel from aiding in disasters where the aforementioned exceptions apply or where governors have requested assistance.

The Confusions of Crisis Decision-Making During Hurricane Katrina

In the case of Hurricane Katrina, the problem that the PCA presented was not a legal one. Rather, the confusion surrounding the *posse comitatus* meant that misperceptions and political positioning allowed for the misappropriation of the act to mean something seriously different than what the law in fact says. In the context of this crisis, President Bush would have needed to impose federal authority in order to employ military forces despite the wishes of the governors of Louisiana and Mississippi.¹⁴ Yet while Mississippi Governor Haley Barbour maintained that Mississippi’s evacuation was already working well and the state could take care of itself, which was essentially the case, the situation became more contentious when the Bush Administration dealt with the Democratic Governor of Louisiana, Kathleen Blanco. As the *Washington Post* reported, the White House started a “full-court press” in the days following Katrina to sway Governor Blanco to ask for federal intervention. As a result, Senator David Vitter (R-LA) relayed a message to Blanco from Deputy White House Chief of Staff Karl Rove that the governor should relinquish her control in order to impose martial law “or as close as we can get;” yet ten minutes before Bush was to announce the deployment of active-duty troops, the governor rejected the administration’s terms.¹⁵

Originally, Governor Blanco had sent a letter to President Bush dated August 27, 2005, in which she requested that the President declare a state of emergency. At this time, she did not deem it necessary to call

for military assistance. Governor Blanco and Mayor Nagin waited until just twenty hours before Katrina made landfall to order a mandatory evacuation, which has perhaps become one of the most widely criticized blunders of the disaster. The delays in asking for federal troops also deserve denunciation in the very same breath, as these postponements created their own kind of catastrophe. On the morning of Wednesday, August 31, with deteriorating conditions at shelters of last resort leaving tens of thousands without food or water, Blanco was in Baton Rouge conducting a round of television interviews to explain the state's crisis response efforts. In the media, the story of Katrina had changed from being exclusively about the horrors of this unprecedented natural disaster into now also dealing with the governmental breakdowns of a tragedy that had no end in sight. An estimated 50,000 to 100,000 New Orleanians had remained in the city; and, while many had made their way to the shelters of last resort, thousands were still scattered across the submerged city, which quickly overwhelmed the National Guard and the Coast Guard relief efforts that begun on the day after the levees were overtopped, Monday, August 29.¹⁶ Yet, despite the fact that the crisis was clearly out of control, active-duty troops were not deployed for days because of the standoff between Blanco and Bush that continued, essentially for the sheer sake of political positioning and in order to protect an image to the public of having everything under control.

Although pictures of the convention center and Superdome were certainly enough to convince the American public otherwise, Blanco made the rounds on morning news programs to defend the state's relief efforts. All at once, the threads of this protective curtain of pretending to be in control unraveled. Between interviews, with cameras still rolling, Blanco's mistakes were broadcast on national television when a conversation with her press secretary was caught on tape. "I really need to call for the military," she whispered, sounding unnerved and dazed. "Yes you do. Yes you do," the aide responded dutifully. Blanco then admitted that "I should have started that in the first call," referring to her initial letter to the president.¹⁷ Governor Blanco's failure to specifically ask for troops led to delays, while 20,000 New Orleanians were sequestered in the Superdome and several thousand others were confined to the Ernest N. Morial Convention Center.¹⁸ As supplies ran out and electricity and plumbing failed in both locations, conditions became nightmarish. In the midst of rancid darkness, families huddled close as rumors of death and violence spread. Chaos led to desperation as no federal help arrived. In the words of one of those who was stuck in the convention center, "It was as if all of us were already pronounced dead."¹⁹

Blanco explicitly called for military action only on Wednesday, August 31, after the state and local capacities for emergency relief had unquestionably been a miserable failure. It would still be three days

until the 7,200 active-duty forces would arrive in the region.²⁰ By the time the call was finally made on Saturday, September 3, approximately 200 New Orleans police had abandoned their posts. Reinforcements from the National Guard meant that 6,500 more of its members arrived in New Orleans to deal with the looting throughout the city, with increasing squalor and unrest at the shelters of last resort, and with rescuing those who still remained stranded in attics and on rooftops.²¹ Yet even these forces were clearly insufficient. Conflicting reports about the severity of what was happening on the ground may account for at least some of the Governor Blanco's hesitation to call for more help, but the governor was not the only public figure whose ignorance about what was actually happening surprised the nation as image after image flickered across the television screen. On September 1, Secretary of Homeland Security Michael Chertoff told Robert Siegel of NPR that "the one thing about an episode like this, if you talk to someone and get a rumor or an anecdotal version of something, I think it's dangerous to extrapolate it all over the place," while declaring that "I have not heard a report of thousands of people in the convention center who do not have food and water," despite the fact that CNN had been reporting for hours that the Superdome and convention center had been housing up to 45,000 people.²²

In fact, when CNN's Soledad O'Brien confronted FEMA Director Brown about these matters the next day, asking, "You were unaware of the situation at the Convention Center until yesterday. When yesterday did you become aware?" Brown's response was that "I think it was yesterday morning when we first found out about it. We were just as surprised as everybody else. We didn't know that the city had used that as a staging area ... Soledad, I learned about it listening to the news reports."²³ O'Brien could not contain her astonishment, demanding, "Why are you discovering this now?" and admonishing that "FEMA has been on the ground for four days, going into the fifth day. Why no massive airdrop of food and water? In Banda Aceh, in Indonesia, they got food dropped two days after the tsunami struck ... I understand that you're feeding people and trying to get in there now, but it's Friday. It's Friday."²⁴ In the weeks that followed, government officials began to point fingers at each other about who was to blame for the slow response; and, while unconscionable mistakes were made at every level, one of the most baffling details remains just how imprecise understandings of the PCA allowed for the act to become appropriated as an excuse for the standoff.

America watched as New Orleanians waited, and, as the hours stretched into days, questions about what was taking so long became increasingly urgent. Behind closed doors, confusions about *posse comitatus* helped to obfuscate the reality of petty politics so that no one felt they were to blame; yet in reality no one was truly innocent in this

stalemate. The fact of the matter remained that neither a dysfunctional bureaucracy nor a muddled legal framework had caused the crucial delays during the most crucible of days after Katrina. Rather, this fiasco resulted from friction between a Democratic governor who saw the White House as preoccupied with public relations issues and a Republican president who waited to order troops to the city of New Orleans for fear of political ramifications for overruling the governor's wishes. The unclear crisis response process only made matters worse on all accounts.²⁵ Yet while breakdowns occurred at all levels – particularly due to miscommunications between FEMA, Homeland Security, and relief efforts on the ground – the greatest mistake of all involved the ways in which key government leaders failed to take initiative, which delayed military intervention in New Orleans. In the earliest moments of crisis, these troops were absent when they were most needed; yet, in the aftermath, amidst the swarm of media attention, the longstanding principle of posse comitatus became the culprit. President Bush called for a change in the policy.²⁶

Revising the Policy Framework of the Posse Comitatus Act

Before Bush even addressed the nation from Jackson Square two weeks after Katrina made landfall, one of the GOP's elder statesmen had already begun to formulate ways to change posse comitatus. Senator John Warner (R-VA) sent a letter to Defense Secretary Donald Rumsfeld to inform him that the Senate Armed Service Committee, which Senator Warner chaired, would be looking into "the entire legal framework governing a President's power to use the regular armed forces to restore public order in ... a large-scale, protracted emergency."²⁷ A few days later, Senator Warner broached the matter on the floor of the Senate, advocating for Congress to craft legislation that would provide the president and the secretary of defense with "correct standby authorities" for disaster management.²⁸ Even in the case of the Insurrection Act, which Vermont Law School Professor Stephen Dycus has emphasized "provide[s] the president with all the authority he could ever want to use military forces for law enforcement, quarantines, and so on," Senator Warner argued for revisions that would clarify executive authority, insisting, "At least we ought to rename that; that's a minimum."²⁹

Yet when we reexamine the literature on the PCA, it is chilling to recognize what might have been different if the advice of government officials had been heeded before the storm. The very same call for change in the PCA recommended by Senator Warner following Katrina had been made by Colonel John R. Brinkerhoff three and half years earlier

in February 2002 – and in the Department of Homeland Security’s own journal of all places:

President Bush and Congress should initiate action to enact a new law that would set forth in clear terms a statement of the rules for using military forces for homeland security and for enforcing the laws of the United States. Things have changed a lot since 1878, and the Posse Comitatus Act is not only irrelevant but also downright dangerous to the proper and effective use of military forces for domestic duties.³⁰

Brinkerhoff’s argument that the PCA needed an overhaul was based simply upon the fact that it could be misinterpreted in the midst of a crisis. In reality, since the PCA does not prevent the military from supporting the police during times of crisis, Brinkerhoff’s recommendation was only to make sure that the worst case scenario did not occur and that the PCA would be misunderstood or misused and prevent meaningful crisis response. It is clear why Brinkerhoff would have felt compelled to write his article in the months immediately following 9/11; but, little could he have known what the worst case scenario would bring, when eighty percent of the city of New Orleans would be covered with standing water reaching up to twenty feet high within a day of the storm’s landfall.³¹ From the time that Hurricane Katrina hit New Orleans on August 29, 2005, it would be nearly a full week until active-duty troops descended upon New Orleans.³² Just as Brinkerhoff feared, when the most decisive moments came, those in control at every level balked and many harkened to the PCA as their reason for doing so. Instead of taking initiative and leading in the way that the people New Orleans so direly needed, these politicians and agency heads cited posse comitatus, passed the buck, and, in essence, claimed, “it’s not my job.”

The Posse Comitatus Act Sparks a Debate over States’ Rights

Even with the recent experience of Hurricane Katrina, not everyone agreed with Senator Warner. Jeb Bush, the President’s brother and the Governor of Florida, wrote an op-ed in the *Washington Post* on September 30, 2005, proclaiming that “I can say with certainty that federalizing emergency response to catastrophic events would be a disaster as bad as Katrina.”³³ Arguing for the bottom-up approach to governance during crises, Governor Bush asserted that “I am proud of the way Florida has responded to hurricanes during the past year. Before Congress considers a larger, direct federal role, it needs to hold

communities and states accountable for properly preparing for the inevitable storms to come.”³⁴ As this debate began to gain coverage on television talk shows and make headlines in national newspapers, other prominent political figures pushed back against changing the status quo. In fact, a USA Today survey taken late in 2005 showed that thirty-six of the thirty-eight governors it polled opposed the idea that “the Pentagon should take the lead in responding to a natural disaster,” with Arkansas Governor Mike Huckabee telling reporters that “I haven’t heard any governors say ‘That’s a great idea. I’ll give up my power to an unelected general to oversee my state.’ That would be a significant, almost revolutionary change in government policy and practice.”³⁵

For their part, the National Emergency Management Association (NEMA) issued a press release on November 1, 2005, which declared that “the primary mission for the Armed Forces is to prepare for war and to fight if necessary.”³⁶ Even though the on-the-ground authorities during the deluge could not fathom why the federal government failed to send troops, their counterparts elsewhere in America denounced new legislation on the issue. According to NEMA’s argument, military forces should be unnecessary since local authorities should have been able to handle the crisis themselves. By enforcing local jurisdiction and doing more to empower first responders like police, firefighters, and rescue workers who knew the lay of the land, future relief efforts would prove more effective than what the military could possibly offer.

Thus, the age-old debate over state and federal powers reignited around the question of who should be responsible during America’s most severe crises – but it must be emphasized that what was being argued about has little to do with the actual substance of the law. Following Katrina, it became popular on Capitol Hill to question the relevance of the PCA; and many policymakers came out in favor of clarifying, or even nullifying, the act based upon their perception of what it entails. The Bush Administration’s creation of the Department of Homeland Security (DHS) and the ratification of the USA PATRIOT ACT of 2001 had already done much to blur the lines between civilian and military duties in domestic affairs, perhaps necessitating a clearer definition of the military’s role in the Post-9/11, Post-Katrina paradigm. As the *Christian Science Monitor* noted on September 19, 2005, the benefits of military involvement in domestic affairs might even provide some opportune ancillary effects due to the fact that “some analysts suggest that rescue missions like the one in New Orleans actually dovetail well with the new face of war – the peacekeeping and nation-building going on in Iraq.”³⁷

This position received mixed reviews in Washington. Retired Major General Bruce Lawlor of the Homeland Security Policy Institute at The George Washington University explained that “If you create within the

Department of Defense a primary mission to respond to these sorts of events, you're creating a huge additional burden. The focus begins to shift, and that's not good."³⁸ This mission drift could lead to major problems not only for the military but also for civilians in need. The US military has been trained to prosecute wartime activity and, as this argument goes, to change their purpose would not immediately do away with the combatant's mentality. Major General Lawlor expounded on this point by stating that "there is an advantage to the warrior ethos. Working counterinsurgency is a lot different from bringing aid and relief to people who are in distress."³⁹ If the US government changed its policy framework to rely on the military for first-responder capacity, then unforeseen consequences for civil liberties very well may result. As with a number of Post-9/11 developments, the PCA debate revealed the inherent difficulty of striking a balance between security and civil liberties. And while posse comitatus would only be in the headlines for several days following Katrina, the policy process determining its fate would play out in the months and years that followed.

Katrina Congressional Reviews Recommend Larger Federal Role

In his Jackson Square address following Katrina, President Bush not only called for an examination of using the military in domestic affairs, but also directed every Cabinet secretary to conduct a study of lessons learned from the storm. "We are going to review every action and make necessary changes so that we are better prepared for any challenge of nature, or act of evil men that could threaten our people," Bush told the nation.⁴⁰ In February 2006, the White House issued "The Federal Response to Hurricane Katrina: Lessons Learned," which provided this analysis:

The Federal response to Hurricane Katrina demonstrates that the Department of Defense (DOD) has the capability to play a critical role in the Nation's response to catastrophic events. During the Katrina response, DOD – both National Guard and active duty forces – demonstrated that along with the Coast Guard it was one of the only Federal departments that possessed real operational capabilities to translate Presidential decisions into prompt, effective action on the ground.⁴¹

As a result, the report recommended that "DOD and DHS should plan and prepare for a significant supporting role during a catastrophe" to ensure that "the transformation of the National Guard is focused on

increased integration with active duty forces for homeland security plans and activities.”⁴²

The US House of Representatives submitted their report, “A Failure of Initiative,” soon thereafter, in which it isolated a number of mistakes made by the government during Katrina. Among them, the House report found that the DOD did not incorporate lessons learned from joint exercises between military and civil authorities, that Northern Command lacked adequate insight into state response capabilities and failed to interface with governors, and that the DOD and DHS failed to adequately define requirements for military assistance to civilian authorities during large disasters.⁴³ Telling of the dire miscommunications between the military and other entities on the ground, the report called for federal intervention, explaining that “the Select Committee believes the Guard response in Katrina would have been more effective had the decision to place troops in Title 32 status been made by the governors, the National Guard Bureau, and the Secretary of Defense.”⁴⁴ Overall, the special bipartisan report painted a dim picture of the Post-Katrina response; yet, despite the plethora of concerns it raised, no specific suggestions regarding the PCA or the Insurrection Act resulted.

HR 5122 and the Ensuing Debate

These changes would come later in the year with HR 5122, the John Warner National Defense Authorization Act for Fiscal Year 2007. Introduced on April 6, 2006, the 439 page appropriations bill passed the House on May 11 and the Senate on June 22 before being signed by President Bush on October 17.⁴⁵ As Senator Warner had suggested earlier, section 1076 of this act changed the name of the Insurrection Act of 1807 to the “Enforcement of the Laws to Restore Public Order.”⁴⁶ Moreover, it also amended 10 US Code Section 333 to include that “The President may employ the armed forces, including the National Guard in Federal service, to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States” in which the President determines that “domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of maintaining public order” and federal or local laws cannot be preserved as outlined in the original Insurrection Act.⁴⁷

While these changes were buried in a document mostly scrutinized for its impacts on appropriations, several members of Congress took note of the alterations to Section 333 of US Code Title 10. Senator Edward Kennedy (D-MA) addressed the Senate chamber by declaring that “While the amendment does not grant the President any new powers, it fills an important gap in clarifying the President’s authority to respond to these

new kinds of emergencies,” to which Senator Warner responded that “The Senator from Massachusetts is correct about the provision. The Armed Forces have a legitimate role to play in responding to serious emergencies. That role benefits from clear definition.”⁴⁸ Other Senators were not as supportive of the bill. Senator Patrick Leahy (D-VT) expressed his serious reservations about the provisions in question, stating that they “subvert solid, longstanding posse comitatus statutes that limit the military’s involvement in law enforcement, thereby making it easier for the President to declare martial law.”⁴⁹

The uncertainty surrounding the PCA, as well as the tendency to exaggerate its restrictions, again emerged in numerous news reports and in discussions on Capitol Hill, proving yet again how exemptions to the act might easily become misconstrued as paving the path to martial law. Senator Leahy made the point that the ambiguity of the PCA served a purpose in maintaining states’ rights, explaining how “There is good reason for the constructive friction in existing law when it comes to martial law declarations” but that the changes in question were “just slipped in the defense bill as a rider with little study.”⁵⁰ Senator Leahy did not acquiesce easily on this matter, either. Even after HR 5122 passed both the House and the Senate and was signed into law by President Bush, he had just begun his protest against the changes made by the bill.

On February 7, 2007, Leahy joined with Senator Kit Bond (R-MO) to release S.513, which called for a “revival of previous authority on [the] use of armed forces and militia to address interference with state or local law.”⁵¹ This legislation would repeal the amendments brought forth by Section 1076 of HR 5122, changing the header of the Insurrection Act to read, simply, “Insurrection” and altering the corresponding table to read “Interference with State and Federal law.” As Leahy explained, “Expanding the President’s powers under the Insurrection Act was a sweeping, ill-considered and little-noticed grant of authority to the Executive Branch, at the expense of the National Guard and the governors. That change in longstanding law treads heavily across basic constitutional issues relating to the rights of the people, the separation of powers, and state and local sovereignty.” HR 869, which was sponsored by Tom Davis (R-VA) and cosponsored by nineteen members of the House of Representatives, served as an identical bill in the House that was introduced on February 7 as well.⁵² As of the time of the writing of this article, both bills have been assigned to the Committee on Armed Services in their respective chambers – and so the debate remains unsettled.⁵³

Government Crisis Responses Since Katrina

So as it stands, the verdict is still out regarding what will happen to the PCA and executive authority to employ military forces

notwithstanding the wishes of state governors. When devastating wildfires swept across southern California during late October 2007, the Bush White House immediately declared a federal emergency to facilitate the delivery of relief funding, while praising Republican Governor Arnold Schwarzenegger and local authorities for being willing to collaborate with the Bush Administration. White House officials were quick to cite the lessons learned from Hurricane Katrina as well. In particular, White House Press Secretary Dana Perino criticized the influence of round-the-clock media scrutiny by saying that “We’re conscious of talking faster. We need to keep up. If you don’t, people might accuse you of not doing what you should be doing.”⁵⁴ After Katrina, the public relations aspect of crisis mitigation efforts became especially problematic for the Bush Administration. If they did not respond fast enough to the fires, then the troubles cited by Press Secretary Perino would await them, but if they pronounced their response work too dramatically then they would be censured as showy political opportunists.⁵⁵

This became particularly apparent when FEMA held a fake news conference in which FEMA’s own employees took the place of reporters during the briefing’s question and answer session. In response to one of the pre-arranged questions, FEMA Deputy Administrator Harvey Johnson stated that “In lessons learned from Katrina, it’s like, is there day and is there night?” He went on to tout the fact that because of the Katrina experience, changes had been made so that “what you’re seeing now is a very smoothly, very efficiently performing team.”⁵⁶ This farce raised the ire of the news media and brought reprimands from the White House and the Department of Homeland Security that the stunt was “simply inexcusable and offensive.”⁵⁷ As much as Katrina was a public relations disaster for FEMA, the staged press conference about the California wildfires only tarnished the agency’s reputation all the more and gave critics an opportunity to bemoan such chronic errors in judgment.

For its part, the city of New Orleans unveiled a new plan for evacuation at the end of March 2007. Quite simply, little changed in the mayor’s plan since the day when Nagin told Larry King two weeks after the storm that “unless they can give me some incredible comfort that this problem has been fixed, I am not going to be caught in this position again.”⁵⁸ In the new evacuation strategy, the mayor called for local volunteers to assume greater accountability for storm preparation activities while placing more emphasis on individual responsibility and community cooperation. True to his words on the *Robinette* show during the storm as well, Mayor Nagin promised to avoid what he called “Katrina chaos” by managing the situation through a bottom-up approach while stockpiling greater resources to empower local first-responders. Despite assurances from the federal government that they

had learned their lessons – and that greater federal control was needed – Nagin’s message of personal responsibility and local control remained the same.⁵⁹

Policy Recommendations for Future Crises

Several specific potential policy recommendations may chart a different course for disasters that America will inevitably face in the years to come – natural, manmade, and a combination of the two, as in the case of Katrina. First, it is now clear that Katrina provides the ultimate a priori argument for reinvestment in our nation’s physical as well as bureaucratic infrastructure. While the former falls outside of the scope of this essay (and deserves serious attention elsewhere, so as not to repeat those same mistakes of cracked levees, abysmal escape routes, et cetera), the way in which the US government responds to crises must be reevaluated thoroughly following the debacle that was the Katrina relief effort. Whether through specially assigned presidential task forces, rejuvenated legislative hearings on FEMA and DHS, or other official and unofficial means, addressing both the large-scale issues comes as an imperative and self-evident first step.

Second, while the debate over state and federal rights during the time of disaster has already been reinvigorated by HR 5122, steps must be taken towards changing perceptions about what the PCA currently allows in order to develop clear, proactive measures in advance of future calamities. In this vein, a special meeting between leaders of the National Governors Association and the Executive and Legislative Branches should take place where the National Governors Association’s Center for Best Practices will present a survey of appropriate case studies from other crises that will allow for meaningful dialogue to take place on a national scale so that previous mistakes will not be repeated. In order to ensure that these events take place in a transparent and meaningful way, press availabilities and public discussions should be arranged to coincide with this special event to raise public awareness about the importance of creating a more useful crisis response policy framework and, particularly, to reach a consensus on what the PCA actually means. Not only will this make the proceedings of this particular gathering more constructive, but it will also ensure that the public will be more likely to raise questions when the government fails to fulfill its obligation to the people during times of crisis.

Third, reconsidering the legal framework involving who controls what activity during a crisis must not end with the passage of HR 5122; rather, following up on the aforementioned conferences is an essential step in order to codify the outcome that emerges from the discussion of the Center for Best Practices’ recommendations between state and federal leaders. These discussions will create immediate and long lasting

real-world implications by bringing all parties together to resolve what the revised PCA actually means. If this is done correctly, then observing the PCA during the next major crisis will be like following any other of the government's everyday regulations in terms of chain of command and governmental powers. Simultaneously, all other disaster relief policies that might allow political differences to potentially hamper the disaster relief process should also be broached, evaluated, and decided upon during these discussions in order to create a more universal set of guidelines for crisis management than is currently available. At the moment, local, state, and national leaders must attempt to decipher what is meant by the revised PCA in the context of the Insurrection Act; and, since Katrina has demonstrated just how problematic this approach can be, an established set of easy-to-comprehend guidelines is also needed to supplement and make sense of the specific language that is currently on the books through the policy framework detailed in 18 US Code Section 1385 and 10 US Code Sections 330-335.

Regardless of the outcome of this ongoing conversation about the implications of crisis decision-making during Katrina, what has become clear is that we must gain a heightened awareness of what the PCA actually restricts so as to avoid the type of confusion and political positioning that occurred after Hurricane Katrina. Even after reconsidering the legal framework involved in protecting American citizens during natural and manmade disasters, the policy discussion has only begun. In the very least, any viable policy solution must hold leaders at every level of government answerable to their duties. In many ways, this story is about individual leaders just as much as it is about the systems within which they operate. Following Katrina, the local, state, and federal governments each neglected their fundamental commitment to protect and provide for the American people. Thus, even more than the policy implications involved in this case study, the most alarming issues raised herein are the mistakes in leadership evinced at all levels. Instead of taking initiative during this time of crisis, politicians in New Orleans, Baton Rouge, and Washington allowed for an abstruse set of legal codes to justify petty politics. The resulting dereliction of duty – for which the local, state, and federal governments are all blameworthy – must never again be tolerated, especially when misunderstandings of posse comitatus serve as the excuse.

Unjustifiable miscommunication, failed leadership, and small-minded politics led to incomprehensible delays in the aftermath of Katrina; and while America's policymakers continue to debate lessons learned and the ensuing legal changes necessitated by the storm, simply arguing over these matters will not ameliorate future relief efforts. The most reliable solutions will be those that lead to a clear and well-understood chain of command, a well-equipped and comprehensively trained relief force (no matter what uniform they wear), and, most

crucially, the management expertise and personal integrity to put aside egos and party affiliations when crisis strikes. Otherwise, no matter what changes might be made to the US body of laws, future politicians are doomed to repeat the inexcusable leadership failures seen in the wake of Hurricane Katrina.

Robert Tice Lalka has worked extensively on a variety of public policy issues surrounding relief, recovery, and reform in post-Katrina New Orleans. Much of this research was inspired by his work as an AmeriCorps Katrina relief volunteer and as Co-Founder of the Duke-New Orleans Post-Katrina Partnership at Duke University's Terry Sanford Institute of Public Policy. He owes a particular word of gratitude to Thomas W. Taylor for his invaluable mentorship and advice for this essay.

Endnotes

1 Nagin's comments also included the following: "I basically told [President Bush] we had an incredible crisis here and that his flying over in Air Force One does not do it justice. And that I have been all around this city, and I am very frustrated because we are not able to marshal resources and we're outmanned in just about every respect." When asked, "Did you say to the President of the United States, 'I need the military in here?'" Nagin responded by claiming, "I said, 'I need everything.' Now, I will tell you this -- and I give the president some credit on this -- he sent one John Wayne dude down here that can get some stuff done, and his name is [Lt.] Gen. [Russel] Honore. And he came off the doggone chopper, and he started cussing and people started moving. And he's getting some stuff done. They ought to give that guy -- if they don't want to give it to me, give him full authority to get the job done, and we can save some people." [CNN.com, "Mayor to Feds: 'Get Off Your Asses, September 2, 2005, <http://www.cnn.com/2005/US/09/02/nagin.transcript/>]

Arriving five days after Katrina hit, Lt. Gen. Honore led federal troops in search-and-rescue missions, but did not contribute to law enforcement tasks.

[Robert Burns, "Military May Play Bigger Relief Role," September 17, 2005, http://www.breitbart.com/article.php?id=D8CM6FBoo&show_article=1]

2 CNN.com "Mayor to Feds: 'Get Off Your Asses,'"

3 Ibid.

4 U.S. Congress, *U.S. Code Title 18 Crimes and Criminal Proceedings, Section 1385*. "Use of Army and Air Force as posse comitatus," *Find Law*, http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=18&sec=1385

5 John R. Brinkerhoff, *The Posse Comitatus Act and Homeland Security*, February 2002, <http://www.homelandsecurity.org/journal/Articles/brinkerhoffpossecomitatus.htm>

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

10 Craig T. Trebilcock, *The Myth of Posse Comitatus*, October 2000, <http://www.homelandsecurity.org/journal/articles/Trebilcock.htm>

11 Sydney J. Freedberg, Jr., "Posse Comitatus: Tiny Law, Big Impact," *National Journal*, November 12, 2005, 3357.

12 Craig T. Trebilcock, *The Myth of Posse Comitatus*.

13 For further information on the last of these triggers, see 10 U.S. Code Sections 331 through 334. "Appendix D: Overview of the Posse Comitatus Act," *RAND*, http://www.rand.org/pubs/monograph_reports/MR1251/MR1251.AppD.pdf. Additionally, see Stephen Young, ed., *The Posse Comitatus Act of 1878: A Documentary History* (Buffalo, NY: William S. Hein & Co. Inc., 2003), Doc. No.s 1-11.

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15 Spencer S. Hsu, Job Warrick, and Rob Stein, "Documents Highlight Bush-Blanco Standoff," *Washington Post*, December 5, 2005, A10.

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17 Lisa Meyers, "How Much Blame Does Gov. Blanco Deserve?" *NBC News*, October 8, 2005, <http://www.msnbc.msn.com/id/9613133/>

18 USC Annenberg Online Journalism Review, "A Timeline of Government Response to Hurricane Katrina," http://www.ojr.org/ojr/wiki/Katrina_Timeline/

19 Wil Haygood and Ann Scott Tyson, "It Was as if All of Us Were Already Pronounced Dead: Convention Center Left a Five-Day Legacy of Chaos and Violence," *Washington Post*, September 15, 2005, A1.

20 The Brookings Institution, *Hurricane Katrina Timeline*.

21 Ibid.

22 Robert Siegel, "US Aide Effort Criticized in New Orleans," *NPR*, September 1, 2005, <http://www.npr.org/templates/story/story.php?storyId=4828771>.

23 CNN.com, "City of New Orleans Falling Deeper into Chaos and Desperation," September 2, 2005, <http://transcripts.cnn.com/TRANSCRIPTS/0509/02/ltn.01.html>

24 Ibid.

25 As more in-depth reports came out of the Gulf South about the political territorialism and bureaucratic processes that cost relief efforts precious resources and delays, the nation continued to ask: "How could this happen in America?" The public also demanded answers about what the Federal Government could have done differently. On October 4, a reporter asked President Bush, "You said at the time of Hurricane Katrina that you were dissatisfied with your administration's response. You have had some time to think about it now. Is there anything that you, yourself, personally, could have done, or would have done differently now?" The President answered, "One area where I hope the country takes a look at is the responsibility between federal, state, and local government when it comes to catastrophic events, highly-catastrophic events. In other words, is there a need to move federal assets more quickly, in spite of laws on the books that may discourage that." [The United States Office of the Press Secretary, *President Holds Press Conference*, October 4, 2005, <http://www.whitehouse.gov/news/>

releases/2005/10/20051004-1.html]

26 The next day, the press asked White House Press Secretary Scott McClellan to clarify the position regarding the Posse Comitatus Act. McClellan replied, “when you’re talking about the response that’s needed for a storm of this magnitude and this scope, it’s certainly something that came into play during all of the discussions when you’re looking at the response from the federal government.” [The United States Office of the Press Secretary *Press Briefing by Scott McClellan; Claude Allen, Assistant to the President for Domestic Policy; and Al Hubbard, Assistant to the President for Economic Policy and Director, National Economic Council*, September 16, 2007, <http://www.whitehouse.gov/news/releases/2005/09/20050916-6.html>]

Ten days later, Scott McClellan further explained that the President “thinks there needs to be a robust discussion with Congress and do we need to establish some sort of a trigger that would automatically say the federal government, and specifically, the military, is the one that will be in charge of stabilizing the situation ... where it wouldn’t be necessary to get a request from the governor or take other action.” [The United States Office of the Press Secretary *Press Briefing by Scott McClellan*, September 26, 2006, <http://www.whitehouse.gov/news/releases/2005/09/20050926-2.html>]

27 Mark Sappenfield, “Disaster Relief? Call in the Marines,” *The Christian Science Monitor*, September 19, 2005, <http://www.csmonitor.com/2005/0919/p01s01-usmi.htm>.

28 Robert Burns, “Military May Play Bigger Relief Role,”

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30 John R. Brinkerhoff, “The Posse Comitatus Act and Homeland Security,”

31 Richard Knabb, Jamie Rhome, and Daniel Brown, “Tropical Cyclone Report: Hurricane Katrina,” *National Hurricane Center*, December 2005, http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf, 1, 9.

32 The Brookings Institution, *Hurricane Katrina Timeline*.

33 Jeb Bush, “Think Locally on Relief,” *Washington Post*, September 30, 2005, A19.

34 *Ibid.*

35 Art Pine, “Should Congress Scrap POSSE COMITATUS?” *US Naval Institute Proceedings* 131, Issue 12 (December 2005): 46. In the months that followed Hurricane Katrina, the National Governors Association issued a statement of its own that cited quotes from the governors of Alabama, Arkansas, Delaware, Florida, Michigan, Mississippi, Montana, and West Virginia, all of whom spoke out against such changes. As NGA Chairman Mike Huckabee added, “You’re going to have a pushback from governors, county executives, mayors, fire chiefs, police chiefs all up and down the emergency-management structure.” [*National Governors Association*, “NGA Statement on Federalizing Emergencies,” October 13, 2005, <http://www.nga.org/portal/site/nga/menuitem.6c9a8a9ebc6ae07eee28aca9501010a0/?vgnnextoid=ed92e01d63ae6010VgnVCM1000001a01010aRCRD>]

36 National Emergency Management Association, “NEMA Policy Position Paper on the Role of the Military in Disaster Response,” November 1, 2005, <http://www.nemaweb.org/?1512> As the statement explained, “NEMA represents state and territorial emergency management directors who are responsible to their governors for all hazards emergency preparedness, mitigation, response and recovery, to include acts of terrorism.” [*Ibid.*]

37 Mark Sappenfield, "Disaster Relief? Call in the Marines,"

38 Ibid.

39 Ibid.

40 CNN.com, "Bush: We Will Do What It Takes," September 15, 2005, <http://www.cnn.com/2005/POLITICS/09/15/bush.transcript/>.

41 "The Federal Response to Hurricane Katrina," *The White House*, February 2006, 54.

42 Ibid.

43 "A Failure of Initiative," US House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, 109th Congress, Second Session, February 15, 2006, 220-222.

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45 United State Congress, H.R. 5122 [109th], John Warner National Defense Authorization Act for Fiscal Year 2007, <http://www.govtrack.us/congress/bill.xpd?tab=main&bill=h109-5122>

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49 Ibid.

50 Ibid.

51 United States Congress, *S. 513: To amend title 10, United States Code, to revive previous authority on the use of the Armed Forces and the militia to address interference with State or Federal law, and for other purposes*, February 7, 2007, <http://www.govtrack.us/congress/billtext.xpd?bill=s110-513>

52 United States Congress, *H.R. 869: To amend title 10, United States Code, to revive previous authority on the use of the Armed Forces and the militia to address interference with State or Federal law, and for other purposes*, February 7, 2007, <http://www.govtrack.us/congress/bill.xpd?bill=h110-869>

53 United States Congress, *S. 513* United States Congress *H.R. 869*

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Interview with Gene W. Hickok

Megan E. Hatch and Paula E. Reichel

Eugene (Gene) W. Hickok is a former U.S. Deputy Secretary of Education under the George W. Bush Administration, State Secretary of Education for the Commonwealth of Pennsylvania, and professor at Dickinson College. He received his Masters Degree in Public Administration and Doctorate in Government from the University of Virginia and has more than a decade of experience in education policy and politics at the local, state, and federal level.

His forthcoming book, with the working title *A School House of Cards*, provides behind the scenes details on the policy formation and politics of No Child Left Behind (NCLB). Dr. Hickok addressed the Cornell Institute for Public Affairs as a part of its Spring Colloquium Series on April 17, 2008.

The Current (TC): *How has your experience as an educator influenced your views on education policy?*

The most obvious response is that it gives you a sense of the end product. As a college professor, I saw a wide range of abilities in my college students coming out of high school. So, I got a glimpse of some of the pluses and some of the minuses about what was going on. Obviously, my experience gave me an appreciation for the classroom.

TC: *You have long been a proponent of choice and accountability in education. Notwithstanding existing barriers to reform, what do you feel is the ideal system necessary to meet both of these goals?*

Ideally, it would be a system that responds to the individual needs of families and kids. The ultimate source of accountability should be my ability to decide where my child goes to school and to hold the school accountable for the education of my child. The problem with that system is that a lot of parents aren't engaged. A lot of schools don't produce accurate, transparent measures. There are many problems. This is why I said ideally.

Accountability. To me, the real word we ought to be using when we discuss education policy is responsibility. I should be responsible for the education of my child and not assume the government will do it for me. I should make sure I hold the school responsible for the education

of my child, and my child has to learn responsibility. So it is a whole different culture. What we intended to do is set up these accountability systems, send our kids to these schools, and assume the school would do its job and the accountability system would tell me where we are. So we leave it all to them. That's not a good idea. Education should always be our responsibility.

TC: How do you encourage accountability among parents for whom education, language proficiency, and other factors have traditionally limited the extent of their engagement?

It sounds easy, but it is hard. You have to make them a part of the education process. In other words, one of the problems is that we have low income, under-educated, non-English speaking, immigrant families arriving in the United States and the answer seems to be to go to school. If the school is inadequate, then they never get out of where they are. And the family never gets the education they need. So what you need is to redesign accountability so that it's more of a family enterprise. That's a huge undertaking, but that is the job of education. It may be tougher now [than in the past]. We have more languages. We have all these challenges, but it is still the job of education. So we've got to change the system to accommodate the needs [of disadvantaged families] as opposed to just saying that parents don't care.

TC: What are your expectations for the reauthorization of NCLB?

Not very high. If it had happened last year, I think it would have been intact. I think it'll be watered down considerably. It will be a debate over money. It will have a different name. The new administration, even if it is a Republican administration, will want to change the name. It is a tarnished brand, I think.

TC: In your mind, what are "ideal" NCLB modifications?

I'm on record as saying I'd have greater flexibility. I also think greater incentives for state leaders to develop high-impact accountability systems are needed. I'd move toward a system that emphasizes student improvement over time. In the classroom, when I grade a student, if I see improvement over the semester I tend to give the student the benefit of doubt. Under NCLB, the way it was written you are either proficient or you are not. If you are not, the school doesn't get any credit. So if I take an "F" student and get him to a "D+" - no credit. I think you need some credit for that. But, you need to always have proficiency as a goal. So it is a very complex system.

TC: *Do you believe NCLB has shifted America's policy trajectory toward greater federal involvement in education or is the trend more toward devolution? How and to what extent?*

I think initially more federal involvement is needed. Whether in the long run there is a backlash- I think there will be- toward devolution. I'd love to see it. I don't mind devolution. I want competition among the states. What is missing all the way around, and that article in *The Current* talked about it I think, or at least the headline did, we need people with the guts to call a spade a spade.¹ If the kids aren't doing it, then the kids aren't doing it. If schools aren't doing it, then don't try to change the scores to make them look better. It takes tremendous guts. Every governor wants to be an education governor. Everyone wants to be able to say our schools are getting better. That's the problem. We don't step up. We are just prolonging the problem. I don't think Washington has the answers. I really don't.

TC: *In your talk you made mention of the fact that NCLB was essentially written in Texas. However, each state is different and what works for one state doesn't necessarily work for all others.*

Yes, I've got to tell you, that was one of the great frustrations for a bunch of us, and a lasting frustration on 'the Hill'. It was, for lack of a better term, this 'Texas swagger'. The sense was that it worked for us in Texas, so it will work everywhere else. It used to drive us crazy, especially those of us who worked at the state level. It was just very simple minded. It wasn't primarily the President, it was primarily Margaret Spellings [current U.S. Secretary of Education].

I'll never forget this moment in the oval office briefing, right before we were ready to go public with our final recommendations. We met with the President, Karl Rove, everybody else, and we were talking about the way regulations are written, the way the law is written, and that within two years we are going to have a whole lot of schools on the list, and that might create a political problem. We informed the President, that you need to know that. I'll never forget this, and this says something about George Bush, he leans over and says, "You mean you're telling me that we'll have a lot of schools that are failing because they're not getting the job done?" and I said "Yes, sir." And he responds "If they're not getting the job done, then they are failing. If there is a political problem, that's Karl's issue." What he was basically saying is I want to go where the facts take me, and if the facts take me into a political mess because the schools aren't working, then we'll deal with it. Now that is the kind of guts that we need to see at the state and local level. But you are not going to see it.

TC: Have your views on the goals of public education evolved over time? If so, how?

The goal has always been the same, but how you get there has to be dramatically different. I've written and talked in my new book on the need for an education revolution. You simply cannot get where you need to be from here. You cannot. I think you need a transformative new approach to American education. I don't know how we are going to do it, but I think it is urgent. The goals are the same, but the means have to be very, very different.

TC: You have talked about how you created grassroots support for charter schools in Pennsylvania. Do you think that could be a successful strategy for other educational policies?

Well, I'll tell you what. Right now I work with a government relations company and I have lots of clients who sell new technologies in education. In a way, that's the way to do it. They are in all these different places around the country doing all these amazing things with productivity and test scores. Everyone is doing better. Gradually, other people hear about this. I'll be in New Orleans on Monday because the Superintendent of the recovery school district has heard about what's going on in Chicago. I bring them over because it is the very same model: it creates all these other fires burning and in all these different places word gets out. All of a sudden the dialogue becomes: "I want to see that," "I want to check that out." And you build a bonfire that changes everything. Change comes from the bottom up as well as from the top down. In education, it needs to come from the bottom up primarily. It's a bit novel and it has its problems. It takes time. It takes patience and room for failure and room for calculation. But that is the way to do it.

TC: "A Nation at Risk" brought to light the importance of human capital development as a foundation for U.S. economic growth. Do you feel the United States public school system has been successful in training a new generation of workers for the demands of the globalized world? How could the system be improved?

No, I think we're doing a lousy job. We are spending too much money and too much time on infrastructure and systems. I'd say that's true with higher education too. I worry that in 10 to 15 years, if we're not careful, higher education is going to be where K-12 education is in terms of competition and talent. We are in grave danger of really falling behind completely. That is because we spend too much time and effort

on institutional supports. It's not that it's unimportant, but not enough is being spent on building intellectual capital.

We live in an age in which it is possible to custom-design an education for everyone, classroom size and all those matters. You can literally have an individualized educational plan for every student. We don't do that, but that's what you need to be able to do. We need to utilize improvements in technology. I'm not saying that technology takes the place of sitting together in a classroom, but we are just way behind the curve.

TC: What can we learn from other nations?

I think there is a lot that we can learn from other nations. We have to recognize that it is not all easily transferable. I've mentioned Singapore and their math achievements in passing. Everyone talks about Singapore and their great math scores. It's very true, but I don't know if I want to live in the kind of culture Singapore has either: very rigid, very hierarchical, very tough. We have a democracy. There are costs and benefits with democracy. But we can learn in terms of pedagogy, in terms of approaches of disciplines. We tend to teach certain disciplines very wide and not very deep. Some need to be taught much deeper but not as wide.

TC: Cornell President David Skorton recently proposed an initiative in which the resources of U.S. educational institutions would be utilized to boost human capacity in the developing world in order to ameliorate global inequities. Is it the place of higher education to improve diplomatic relations among nations? From your experience, do you feel this strategy will be effective?

I think, and this may sound parochial, but that is just the way I am, I think certainly universities, institutes of higher learning, have an obligation to try to contribute globally. They also have an obligation to make sure they contribute back home. One of the great problems this country has is that most post-secondary institutions do relatively little to improve the K-12 system. Sometimes they have their schools of education doing things, but that is a very traditional way of doing it. I like to use the story of medical school students, once a week, teaching science to elementary school students in Harrisburg [Pennsylvania] as an example of how things ought to be done. Post-secondary education could do more to improve K-12 than anybody else.

Think about this, it is one thing for the state to give you a test to see if you can graduate from high school, or to see if you are proficient.

Most high school kids could give a half a damn. But, if that test gets you into Cornell, and if Cornell says if you score a certain grade we'll let you in, you are going to care, right? Little things like that. Post-secondary education in this country does not pay enough attention to K-12 education. So while I think they should be engaged globally on issues, and they are and that's very important, let's not forget our obligations at home too.

TC: You have held various positions in both the private and public sectors. What are some of the unique challenges to public sector practice?

I think for me, it has always been getting the right people and developing a sense of mission, purpose, collegiality, camaraderie. In the public sector, you don't always have responsibility or the ability to put your own team together. It's sort of given to you. At the state level in Pennsylvania I was lucky in that I gradually put a team together that to this day remains very close and did great things. In Washington it's bigger, more diverse, more politics, more egos, more ambitions. A lot of people are there for the wrong reasons. They're there for the office. They're thinking about "I got this. What can I get next?" These are things that happen in the private sector, but to me the public sector is a little bit tougher animal.

But if you're in the right job, it's fantastic. I was really fortunate. I had a governor and a president whose number one issue was education. To go talk to the governor or the president and know they know what I'm doing, and giving me sort of carte blanche, you can't ask for more than that. You care about it. You care about it because it is so important. I would not have been happy in a similar position in some other agency because it wouldn't have had the sense of purpose. They both have their liabilities and their assets.

TC: What skills do you feel MPA students interested in this field should focus on developing in order to be successful?

You have to understand politics in its broadest sense. You have to understand the process. You have to understand personality and people. That is the one thing that I think most courses and academic disciplines forget. We've all studied American politics, we've all studied the policy making process, we've all studied Public Administration, we all know that apparatus. In the end, it comes down to being cognizant of the human enterprise, and you have to be able to understand how people operate. One day Ted Kennedy is going to be sitting across from you and you are going to have to understand how he works so you can

work with him. That's not something you learn in textbooks. That's something that you learn by being around the process. So, to me, it's those all coming together. It is a fascinating world to be a part of.

TC: *If you could impart the next President with one piece of advice regarding the American education system, what would it be?*

Be bold! I don't mean be bold in terms of a large governmental role for Washington. Be bold in terms of tapping the talents, challenging the American people to think differently about the possibilities. That's our biggest challenge. We tend to think in terms of rules and regulations, standards and accountability, and compliance, and blah blah blah. It just crushes people. It turns a lot of teachers into bureaucrats. I think that we need to talk about imagining the possibilities.

The value of rhetoric for the presidency is incredibly important. Gather a group of university leaders and sit them down, not in Washington, but somewhere else and say, "I challenge you to challenge your faculty to challenge your state leadership to come up with an alternative idea of how to educate every child in your state." You can do it. You do not need new money. You've got lots of money. Just spend it differently. Empower those folks. That's what government is. In fact, if you think about it, it is the last place we should be looking for it. Government has always been the last place you get new ideas. That's what makes this country so great. The ideas come from individuals. So we should all be having that kind of conversation.

TC: *Any last words of wisdom?*

Just get engaged. It sounds corny, but it's true.

Megan E. Hatch, the Co-Managing Editor of The Current, is pursuing her Masters of Public Administration (MPA) at Cornell University. A 2009 candidate with a focus in Human Rights and Social Justice, she received her B.A. in Government and Psychology from Georgetown University in 2005.

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Endnotes

¹ Paula E. Reichel, “Manipulating the Metric: No Child Left Behind and AYP Measurement”, *The Current* 11, no. 1 (Fall 2007): 1-16.

CIPA Theses and Professional Reports

Spring 2008

Current Readers:

For the first time The Current is honored to present a selection of Professional Report and Thesis titles of graduating CIPA Fellows for the spring of 2008. All seven policy focus areas are represented within this list of 28 professional reports or theses.

It is hoped that by publishing this list the readers of The Current will gain a deeper understanding of CIPA and the quality and diversity of research being pursued by CIPA fellows. The Current staff encourages readers to contact the authors and/or CIPA if they are interested in obtaining a full text electronic copy of any of the reports or theses listed below.

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Alexander Lane

EPA Professional Report:

Home Energy Monitor Market and Industry Scoping Report

Richard Benware

Finance and Fiscal Policy Focus

Housing Bubbles:

An Analysis of the American Housing Market from 1965 to 2007

Andrew Vieweg

The Implementation of Projects with Public Private Partnerships (PPP) on Indian Railways

Prashant Ranade

Government, Politics, and Public Policy Focus

Decolonization, Immigration, and Rioting in France

Charity Tubalado

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A Statistical Analysis of Rural Kansas Communities

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The Effects of School-Based Health Centers on Academic Achievement

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Articles and views should be written in clear, jargon-free English with adequate documentation. We aim to be accessible to a variety of readers ranging from scholars to policymakers both foreign and domestic. Textual style generally follows the *Chicago Manual of Style*. References and citations should be included as endnotes presented at the end of the text.

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Article text should be preceded by a maximum 100-word abstract setting forth the topic under discussion and the public policy dimensions in view. The author should indicate the central thesis of the article and how particular arguments will be presented in its support.

Submissions should be approximately no more than 30 pages double-spaced. An 11-point Georgia font is preferred. Pages must be numbered. Please prepare your submission with appropriate subheadings if applicable. Consult recent issues of *The Current* as a guide (www.thecurrent.cipa.cornell.edu).

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